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No. _____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1996

R. CHARLES ROBB, PETITIONER,

v.

THE MISSISSIPPI BAR, RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF MISSISSIPPI

PETITION FOR WRIT OF CERTIORARI

R. Charles Robb,
Pro Se

Post Office Box 10793
#5 Twelve Oaks Circle
Jackson, Mississippi
39209-0793
(601) 922-1111

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29 pp

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QUESTIONS PRESENTED

1. In attorney disciplinary matters, may a state court of last resort exercise its "exclusive and inherent" jurisdiction to supersede the jurisdictional predicate required by its disciplinary rules for bar appeals in order to obtain subject matter jurisdiction of such appeals?

The bar did not allege nor are there minutes of the bar commissioners that reflect that the board found the hearing tribunal's findings and decision to have been outside certain standards and that its general counsel should perfect an appeal. **R. Discip. Miss. Bar, Proc. R.9(1)**. The attorney raised the jurisdiction question before the court in his motion for rehearing. The Mississippi Supreme Court has departed from the requirements of establishing subject matter jurisdiction when the question is raised and abandoned the bright line drawn by the Fifth Circuit Court of Appeals requiring courts to comply with their own rules.

2. Does the Due Process Clause require a higher level of constitutional scrutiny when a state court of last resort enhances attorney discipline after reviewing the appeal *de novo* by way of a self-assertion to not be bound to its standards of review of lower court decisions or of administrative decisions?

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THE MISSISSIPPI BAR, RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

PETITION FOR WRIT OF CERTIORARI

The petitioner R. Charles Robb respectfully prays that a writ of certiorari issue to review the **Decision** and **Order Of Suspension** of the Supreme Court of Mississippi, the denial of a timely filed **Motion For Rehearing** thereon having been entered in the above-entitled proceeding on September 19, 1996.

OPINIONS BELOW

The final **Decision** and **Order of Suspension** of the Supreme Court of Mississippi is not reported. (App.,**infra**, 1a-17a) The **Decision** and **Order of Suspension** became final on September 19, 1996, and is evidenced by a letter from the Clerk of the Supreme Court of Mississippi. (App.,**infra**, 27a-28a) The **Opinion** and **Judgment** of the Complaint Tribunal of the Supreme Court of Mississippi, dated August 25, 1993, is not reported. (App.,**infra**, 19a-27a)

JURISDICTION

As grounds upon which this Court has jurisdiction, R. Charles Robb would show that the final **Decision** and **Order of Suspension** of the Supreme Court of Mississippi, dated June 20, 1996, was entered without the requisite subject matter jurisdiction of that court to hear the appeal of The Mississippi Bar and was a denial of Mr. Robb's procedural due process rights afforded him by the Fifth and Fourteenth Amendments of the **Constitution of the United States of America**.

The jurisdiction of this Honorable Court to review the judgment of a state court of last resort is invoked under 28 U.S.C. §1257(a) and 2101(c) and is submitted for consideration pursuant to Rule 10.1(b) of this Court where a state court of last resort has decided a federal law question in a way that conflicts with the decision of a United States Court of Appeals and pursuant to Rule 10.1(c) of this Court where a state court of last resort has decided a federal law question in a way that conflicts with applicable decisions of this Court.

CONSTITUTIONAL PROVISIONS AND STATE DISCIPLINARY RULES

Fifth Amendment, **The Constitution of the United States of America**:

"No person shall . . . be deprived of life, liberty, or property, without due process of law . . . ."

Fourteenth Amendment, **The Constitution of the United States of America**:

"[N]or shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Rules of Discipline For The Mississippi Bar

Rule 9. Appeals

(a) Either the Bar or the accused attorney may, as a matter of right, appeal any final disposition of the Tribunal to the Court. . . .

Procedure (9.1) Who May Take an Appeal. Either the Board or the attorney may appeal a final disposition of the Tribunal. The Board of Commissioners of the Bar shall determine whether General Counsel shall take an appeal on behalf of the Bar. The Board of Bar Commissioners may direct General Counsel to perfect an appeal when the Board believes that the Tribunal's findings and decisions are arbitrary and capricious, not supported by substantial evidence, manifestly wrong, or in error as to a matter of law.

STATEMENT OF THE CASE

The issue before this court is the denial of due process in a *de novo* review proceeding and denial of procedural due process by a state court of last resort during the course of any attorney disciplinary appeal.

Primarily, this Honorable Court is asked to determine the effect of the usurpation of jurisdiction by a state court of last resort upon the procedural due process rights of any attorney in the bar's appeal of a disciplinary case.

If this Honorable Court finds that urisdiction exists when a state court of last resort has not asbided by its own rules, the motivation of the court for enhancing punishment through the *de novo* review process should be reviewed with a higher level of scrutiny.

The petitioner, R. Charles Robb, [Mr. Robb], is a citizen of the United States of America, was admitted to the practice of law in the State of Mississippi in 1979, and at all times material herein has resided

in Warren County, Mississippi, while maintaining law offices in Vicksburg and Jackson, Mississippi.

Mr. Robb represented Dr. Westbrook (she was then in medical school) in an property settlement contempt hearing against Mr. Benefield, who was represented by Mr. Prisock. Mr. Robb and Mr. Prisock had agreed to the hearing date. Mr. Prisock and Mr. Benefield did not appear at the hearing. The chancery court entered an **Order Of Civil Contempt** against Mr. Benefield, with a provision to purge himself. Mr. Robb prepared the **Order** and presented it to the court without sending Mr. Prisock a copy for approval as to form only.

Mr. Benefield was arrested on the court's **Order** and paid $10,000 to purge himself. Mr. Benefield filed a **Motion** to set aside the contempt **Order**. The chancery court appointed a special master who, after a hearing, issued a **Special Master's Report.** (App. 29a-32a) The chancery court adopted the **Report** and issued an **Order** setting aside the prior contempt **Order.** Neither the **Report** nor **Order** stated a legal basis for setting aside the contempt order.

During the time for appeal of the **Order** setting aside the contempt order, Dr. Westbrook discharged Mr. Robb and retained new counsel. No appeal was taken of that **Order**.

On a complaint filed by Mr. Benefield, a **Formal Complaint** was filed against Mr. Robb by General Counsel for The Mississippi Bar [Bar] on August 19, 1992. (R. 1) The basis of the **Formal Complaint** was that Mr. Robb did not send Mr. Prisock a copy of the proposed order allegedly required by the **Mississippi Uniform Chancery Court Rules**, "concealed" the existence of the contempt **Order** by not disclosing its existence to Mr. Prisock during the next four (4) months, and lured Mr. Benefield (with his counsel) to a deposition and there caused Mr. Benefield to be arrested. No claim was made nor has any court found that the **Order for Civil Contempt** was invalid or

obtained in violation of any rule of court or rule of professional responsibility.

The **Formal Complaint** charged that Mr. Robb violated certain provisions of the **Mississippi Rules Of Professional Conduct** of The Mississippi Bar. (R. 5 and App. 34a)

The Complaint Tribunal [Tribunal] rendered an **Opinion** and **Judgment**. (App. 19a-27a) On August 25, 1993, the Tribunal's **Opinion and Judgment** was timely filed with the Supreme Court of Mississippi. The **Judgment** of the Tribunal was that Mr. Robb had violated some of the rules charged by the Bar, had not violated one, and the violation of one, though technical, would not subject him to discipline. The Tribunal disciplined Mr. Robb by public reprimand.

After the Bar filed a **Notice of Appeal**, Mr. Robb filed his **Notice of Appeal**. The Bar briefed the issues. Mr. Robb filed a **Motion To Strike** the findings of the special master against Mr. Robb's actions in the contempt case.

The court passed the **Motion** to strike until its decision on the merits of the case. Mr. Robb argued in his **Motion to Strike** that as a proximate result of his subsequent discharge as Dr. Westbrook's counsel, he had no substantive nor procedural due process rights to confront the **Report** and **Order**, each of which were entered without any conclusions of law.

Mr. Robb filed his brief contemporaneously with the filing of his **Motion to Strike**.

At oral argument, the court questioned whether Dr. Westbrook had been harmed by Mr. Robb's suit against her. Such issue had not been raised by the Bar before the Tribunal nor briefed to the court. No evidence in support of or defense thereto had been admitted at the trial level of the disciplinary proceedings. The court demanded that the county court's file in Mr. Robb's suit against Dr. Westbrook be delivered to the court by a date certain. Mr. Robb submitted the requested

documents and filed a **Motion For Leave To Respond To The Court's Supplement To The Record**. (App. 37a-39a) The **Motion** set forth that addition of evidence to the record by the court is outside the **Mississippi Rules of Appellate Procedure** and the **Rules Of Discipline for the Mississippi Bar**. Mr. Robb argued that the fundamental fairness doctrine should allow him to respond to the supplementation of evidence for mitigation. (App. 38a) The **Order** of the court "summarily denied" that **Motion**.

On June 20, 1996, the Mississippi Supreme Court rendered a **Decision.** Without any evidence of record to support its findings, the court found that Dr. Westbrook "lost her claim" for arrearage and future property settlement payments "as a result of the lower court's finding that Mr. Robb's effort to execute on the contempt order were improper."

In its **Decision**, the court denied Mr. Robb's **Motion** to strike.

On June 20, 1996, the Mississippi Supreme Court, contrary to its own **Rules**, entered an **Order of Suspension** for six (6) months effective eleven (11) days later. The time for filing a **Petition for Rehearing** did not run until eighteen (18) days after the **Decision** and **Order** were rendered [holidays and weekends extended the 14-day rule].

In civil cases before the court, the filing of a petition for rehearing stays the **Order** and issuance of a **Mandate**. Mr. Robb filed a **Motion To Stay Order Of Suspension And The Issuance Of A Mandate Pending A Decision On Petition For Rehearing**. (App. 39a-45a). The court denied that **Motion**, but never issued a **Mandate**.

Mr. Robb timely filed his **Motion For Rehearing**, which included the issues of jurisdiction and denial of procedural due process now brought before this Honorable Court. (App. 46a-51a).

By letter dated September 19, 1996, from the Clerk of the Supreme Court of Mississippi, Mr. Robb was noticed that his **Motion For Rehearing** was denied. (App. 28a-29a) The court never entered an

Order which denied a rehearing nor addressed the issues raised therein and for which an appeal to this Honorable Court is made.

Mr. Robb files this appeal within ninety (90) days of said clerk's letter. Mr. Robb suspended his practice of law July 1, 1996, notwithstanding the pendency of his **Motion For Rehearing**. This **Petition** is directly from the state court decision.

Reasons For Granting The Writ

The Mississippi Supreme Court has decided an important question of federal law in a way that conflicts with applicable decisions of this Court and conflicts with a decision of the Fifth Circuit Court of Appeals, **In The Matter of Thalheim**, 853 F.2d 383 (CA5 1988) concerning violations of procedural due process. This departure from the requirements that subject matter jurisdiction be established when called upon by a party or the courtm implies that the Mississippi Supreme Court considers its "exclusive and inherent" jurisdiction to be sufficient to grant it subject matter jurisdiction, notwithstanding its disciplinary rule to the contrary.

A decision by this Honorable Court to correct the administration of the law by one state court of last resort safeguards for all attorneys and bar associations, as well as other administrative agencies, a definitive standard of jurisdiction in disciplinary matters.

This Honorable Court should exercise its power of supervision and review where a state court of last resort departs from the accepted and usual course of judicial proceedings by exercising jurisdiction outside its procedural rules and denying the attorney procedural due process rights in *de novo* review of a disciplinary case.

The error concerns an important constitutional, jurisdictional and procedural problem in similar jurisdictional situations which are likely to arise in attorney and other disciplinary matters.

The statutory jurisdictional ground is 28 U.S.C. §2101 (c) and §2101 (c).

I.

Supreme Court Of Mississippi Usurped Subject Matter Jurisdiction Of Bar Appeal

At issue is whether General Counsel had authority to effect an appeal for the Bar. Without such authority, the court had no jurisdiction to consider the Bar's appeal.

Insufficient Predicate For Jurisdiction

In his **Motion for Rehearing** to the Mississippi Supreme Court, Mr. Robb raised for the first time that there had been no evidentiary predicate laid by the Bar to establish that the court had jurisdiction of the Bar's appeal. The question of jurisdiction may be raised at any time. **City of Gainesville v. Brown-Crummer In v. Co.**, 27 U.S. 54, 59, certiorari denied 280 U.S. 569 (1928); **Matson Nav. Co. v. U.S.**, 284 U.S. 352 (1932). The Mississippi Supreme Court has likewise long recognized that the question of jurisdiction may be raised at anytime. **Green v. Creighton**, 10 Smedes & M (18 Miss.) 159, 48 Am.Dec. 742 (1848) and **Hunt v. Hunt**, 629 So.2d 548, 551 on rehearing (Miss. 1993). The court may at any time, *sua sponte*, question its jurisdiction to rule. **Mansfield, Coldwater & Lake Michigan Railway v. Swan**, 111 U.S. 379, 382 (1884). *See Also*, **Michael v. Michael**, 650 So. 2d 469, 471 (Miss. 1995) (court requires that it note its own lack of jurisdiction); **May v. V.F.W. Post #2539**, 577 So. 2d 372, 374 (Miss. 1991) (court is duty bound to take cognizance of its own jurisdiction or lack thereof).

The court denied the **Motion** without comment.

The required predicate for the Bar to appeal is set forth in the **Rules of Discipline for the Mississippi State Bar [Disciplinary Rules]**. [1] The Board of Commissioners is an agency established by the

court and the state legislature for administering the court's disciplinary jurisdiction and speaks through its minutes. (App. 35a and 36a- 37a)

The procedural rule first requires that before the Board makes a decision to appeal, it must "believe" that the hearing tribunal's *findings and decision* are arbitrary and capricious, or not supported by substantial evidence, or manifestly wrong, or in error as to a matter of law.

To "believe" is to make a decision concerning a matter. To make a decision, the Board must have a meeting and minutes thereof.

The brief of the Bar did not state that a decision concerning the tribunal's findings and decision had been made by the Board. Neither did it attach to its **Notice of Appeal** minutes of the Board concerning that matter.

After the Board makes a decision that the Tribunal's *findings and decisions* do not meet the standard set forth by the procedural rule, its General Counsel cannot take the appeal without the direction of the Board. A determination by the Board is mandatory not discretionary.

The brief of the Bar did not state that a decision to appeal had been made by the Board. Neither did it attach to its **Notice of Appeal** minutes of the Board wherein a decision to appeal was made.

General Counsel serves at the behest of the Board of Commissioners of the Bar. The **Disciplinary Rules** control General Counsel's authority to file the appeal on behalf of the Board of Commissioners of the Bar. The Mississippi Supreme Court instituted the **Disciplinary Rules** and determined that "matters pertaining to attorney discipline . . . and such proceedings shall be conducted in accordance with these rules" (Rule 1). (App. 35a) *See also*, **Mississippi State Bar v. Attorney L,**

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[1] **RULE 9. APPEALS** . . . Procedure (9.1) . . . The Board of Commissioners of the Bar shall determine whether General Counsel shall take an appeal on behalf of the Bar. The Board of Bar Commissioners may direct General Counsel to perfect an appeal when the Board believes that the Tribunal's findings and decisions are arbitrary and capricious, not supported by substantial evidence, manifestly wrong, or in error as to a matter of law.

511 So.2d 119, 122 (Miss. 1987). Further, the right of appeal is limited to the Board of Commissioners of the Bar, not General Counsel. As counsel for his client, General Counsel may only take such actions as the client may authorize. The court does not acquire jurisdiction of an appellant [and likewise his cause] when an unauthorized person appeals a decision for such appellant who has not consented thereto. **City of Natchez v. Craig,** 3 So. 2d 837, 839 (Miss. 1941).

The purpose of General Counsel's authorization appears to be self-evident. The decision making is by attorneys elected at large to the Board (App. 35a-36a) and who are less likely to personalize the decision of the tribunal or against the attorney being or not being disciplined. Whereas General Counsel, who is more closely associated with the case, facts and personalities, potentially could allow personal reasons to appeal or not. Whether intended to or not, the procedure complies with the due process standards set forth by this Honorable Court to avoid a potential for vindictiveness on the part of the prosecutor. *See* **North Carolina v. Pearce**, 395 U.S. 711, 724-26 (1969) ; **Colten v. Commonwealth of Kentucky**, 407 U.S. 104, 116-118 (1972); **Chaffin v. Stynchcombe**, 412 U.S. 17, 25-27 (1973); **Blackledge v. Perry**, 417 U.S. 21, 27-28 (1974).

General Counsel had adequate opportunity to produce the minutes of the Board establishing its compliance with the rule and procedure of the court. Beside being able to present the minutes with either the **Notice of Appeal** or with the **Brief**, he was allowed by the **Mississippi Rules of Appellate Procedure**, Rule 40(a), to produce his response to the **Motion for Rehearing** within seven (7) days of its filing but did not respond. Though no provision of the **Mississippi Rules of Appellate Procedure** provides for such action by the court, the court *sua sponte* invited the Bar to respond out of time but by a time certain. The Bar's response was outside the time allowed by the court.[2]

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[2] Mr. Robb filed a **Motion for Rehearing** on July 8, 1996. The Mississippi Bar

However, the untimely **Response** failed to include the predicate evidence relating to the Board's compliance with Procedural Rule 9.1 of the **Disciplinary Rules** nor evidence which "convey[s] a fair, accurate, and complete account of what transpired [before the Board of Bar Commissioners] with respect to those issues that are the bases of appeal." **Mississippi Rules of Appellate Procedure**, R.10(f). (App. 33a)

The Court struck the Bar's **Response** to the **Motion For Rehearing** and denied the **Motion** without opinion.

In a case strikingly similar to the case at bar is where the Fifth Circuit Court of Appeals found that the United States District Court for the Eastern District of Louisiana

> violated procedural due process by failing to follow its own requirements concerning proper disciplinary procedure when it instituted proceedings with respect to alleged federal infractions despite the attorney's panel recommendations.

In The Matter of Thalheim, 853 F.2d 383, 386 (CA5 1988).

Richard A. Thalheim, Jr. was disciplined by the Louisiana State Bar Association with a three-months suspension for certain negligent conduct. A panel of three attorneys was appointed by the federal district court to investigate possible misconduct in its court by Thalheim. The requisite predicate to a disciplinary proceeding before that district court is a written recommendation therefor by the panel. Notwithstanding that there was no evidence of a written recommendation or lack thereof as to whether disciplinary proceedings were warranted, a disciplinary proceeding was instituted against the attorney. The hearing judge recommended that the attorney be suspended for one-year. A

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response was due July 15, 1996. On July 29, 1996, the court caused its court administrator to notice The Mississippi Bar that it had ten (10) days within which to file a response to the **Motion For Rehearing.** See Appendix ??. Such response was due August 8, 1996, but was not filed until August 9, 1996.

majority of the judges of the Eastern District increased the one-year suspension to two years, without any factual findings or conclusions of law.

As is in the Mississippi **Disciplinary Rules**, that district court's regulatory scheme as it applied to those proceedings is in mandatory terms by use of the word "shall". **Id.** at 387. Because "[a]ttorney disbarment and suspension cases are quasi-criminal in character" , [**Id.** at 388, citing **In re Ruffalo**, 390 U.S. 544, 55 (1968); **Charlton v. Federal Trade Commission**, 543. F.2d 903, 906 (CAD.C. 1976); **Matter of Abrams**, 521 F.2d 1094, 1108 (CA3), cert. denied, 423 U.S. 1038 (1975)],

> the court's disciplinary rules are to be read strictly, resolving any ambiguity in favor of the person charged. Moreover, the same principle of construction follows from the fact that it was the court that drafted these rules. The court wrote its own rules; it must abide by them.

Thalheim at 388. *See also,* **The Mississippi Bar v. Attorney G**, 630 So.2d 344, 348 (Miss. 1994); and **Prudential Ins. Co. v. Gleason**, 187 So. 229, 233 (Miss. 1939) (substantial compliance is mandatory where jurisdiction is prescribed by statute).

> [A] district court's inherent power to discipline attorneys who practice before it does not absolve the court from the obligation to follow its own rules which it created in order to implement its exercise of such power.

Thalheim at 399, referencing **United States v. Stoneberger**, 805 F.2d 1391, 1392-93 (CA9 1986) and **Abrams**, 521 F.2d at 1103-05.

In a suspension proceeding appeal, the Mississippi Supreme Court found the Bar did not comply with the disciplinary procedural rule to produce a certified copy of the judgment of conviction for summary

suspension notwithstanding the attorney pled guilty in the lower court proceedings. The court acknowledged that it

> is bound by its own disciplinary rules. Since attorney disbarment and suspension cases are quasi-criminal in character, this Court must construe the rules strictly.

The Mississippi Bar v. Attorney G, 630 So.2d 344, 348 (Miss. 1994)

Also, the Mississippi Supreme Court found

> [a]ttorney disbarment and suspension cases are quasi-criminal in character. Accordingly, the court's disciplinary rules are to be read strictly, resolving any ambiguity in favor of the person charged. . . . When a court undertakes to sanction an attorney for violating court rules, it is incumbent upon the sanctioning court to observe scrupulously its own disciplinary procedures. . . . [A]ttorneys have the right to rely upon the rules.

Attorney G at 348 *citing* **Thalheim** at 388 and 390.

The Mississippi Supreme Court has denied Mr. Robb procedural due process in not dismissing the Bar's appeal for lack of subject matter jurisdiction on the ground that there was no evidence to establish that the appeal was predicated upon mandatory actions by the Board of Commissioners of the Bar.

II.

Unfettered *De Novo* Review Affords No Cognizable Standard Of Review

This Honorable Court is not asked to review *de novo* a hearing tribunal's opinion and judgment but rather to consider the *de novo* procedure of a state court of last resort of such opinion and judgment.

Unfettered review *de novo* by a state court of last resort in attorney disciplinary cases is repugnant to the Due Process Clause.

> In order to assure the absence of [sic] a [retaliatory] motivation, we have concluded that whenever a judge imposes a more severe sentence upon a defendant after a new trial, the reasons for his doing so must affirmatively appear. Those reasons must be based upon objective information concerning identifiable conduct on the part of the defendant occurring after the time of the original sentencing procedure. And the factual data upon which the increased sentence is based must be made a part of the record so that the constitutional legitimacy of the increased sentence may be fully reviewed on appeal.
>
> **North Carolina v. Pearce**, 395 U.S. 711, 724-26 (1969).

Because attorney disciplinary cases are quasi-criminal,[3] due process protections are as rationally applicable to the *de novo* review process of a state court of last resort as they are to a re-sentencing proceeding of a criminal after being convicted on a new trial or trial *de novo* . See also **North Carolina v. Pearce**, 395 U.S. 711, 724-26 (1969); **Colten v Commonwealth of Kentucky**, 407 U.S. 104, 116-118 (1972); **Chaffin v. Stynchcombe**, 412 U.S. 17, 25-27 (1973); **Blackledge v. Perry**, 417 U.S. 21, 27-28 (1974).

Scrutiny

The Complaint Tribunal is an agency of the Mississippi Supreme Court (App. 35a) which holds the evidentiary hearing in attorney disciplinary cases. **Disciplinary Rule** 2(a). "Hearings before Complaint Tribunals shall be as cases in chancery." **Disciplinary Rule** 8(a). (App. 35a-36a) On appeal from the hearing tribunal, the Mississippi Supreme Court exercises inherent and exclusive jurisdiction over attorney disciplinary cases (App. 35a) (as do all state the courts) and reviews *de novo*, without being

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[3] **In re Ruffalo**, 390 U.S. 544, 551, 88 S.Ct. 1222, 1226, 20 L.Ed. 2d 117 (1968)

> bound by the rule applicable to administrative agencies to the effect that their orders must be affirmed, unless they are arbitrary and capricious and are not supported by substantial evidence, or the rule that, as in chancery, the chancellor will not be reversed on the facts unless he is manifestly wrong.
>
> **Disciplinary Procedural Rule** 9.4 (App.36a)

This self-asserted position of a state court of last resort over the disciplinary proceedings and its review, which is outside its standards of review of lower court decisions and of administrative agency decisions, should raise the constitutional level of scrutiny by this Honorable Court of judicial motivation in cases of increased discipline.

At no time in the proceedings before the Mississippi Supreme Court than when the court *added* an issue not before the hearing tribunal was it more evident that *de novo* review fails procedural due process standards. That issue was neither alleged by the Bar nor argued before the hearing tribunal. The deficient nature of *de novo* review to protect procedural due process rights without judicial scrutiny is evidenced by the court's denying Mr. Robb an opportunity to respond to the new evidence.

Minimally, the due process protections afforded by this Honorable Court's ruling in **Pearce, supra.**, should be applicable to any attorney disciplinary case of enhanced punishment. When a state court of last resort enhances discipline, the record should affirmatively show the reasons therefor and the reasons should be based upon objective information concerning the attorney's conduct occurring after the original disciplinary proceeding. *See* **Pearce**, 395 U.S. at 724-26.

No New Conduct

The Mississippi Supreme Court ruled that Mr. Robb 's "acts following the arrest of Benefield . . . must be considered in imposing sanctions." The Facts show only matters occurring before the tribunal

hearing and the tribunal's imposition of discipline. The court did not identify any conduct by Mr. Robb occurring after the disciplinary hearing to support imposition of increased sanctions as required by **Pearce, supra.**

To "substantiate . . . that Mr. Robb should be suspended from the practice of law", the court stated as reasons therefor "his demeanor and attitude before the Court, and his apparent disregard for the rights of others"

There is neither objective information identified of record nor facts stated in the **Decision** to support that Mr. Robb showed disrespect for the court or its proceedings. Neither is there any objective information concerning identifiable conduct on the part of Mr. Robb occurring after the original disciplinary procedure and which showed disregard for the rights of others. **Pearce**, 395 U.S. at 724-26.

Further, the court ruled that Mr. Robb 's "failure to furnish obvious information to counsel opposite and his deceit in arranging the arrest of Benefield merit a suspension from the practice of law." The failure to provide Prisock with a copy of the proposed order of civil contempt as required by the chancery court rule was before the tribunal and addressed in its finding that Mr. Robb violated **Miss.R. Prof. Conduct** 3.4(c). Likewise, the hearing tribunal addressed Mr. Robb 's deceit by finding that he violated **Miss.R. Prof. Conduct** 8.4(c). (App. 21a-22a and 25a)

In neither rule violation did the court cause its reasons for increasing discipline to affirmatively appear nor did it state objective information concerning identifiable conduct on the part of Mr. Robb occurring after the time of the original tribunal's sentencing procedure. **Pearce**, 395 U.S. at 724-26.

Protective Standard

Without any cognizable standard of review, the Mississippi Supreme Court is unrestrained by *de novo* review of attorney disciplinary

cases. The application of the Due Process Clause by this Honorable Court is the only check upon such unrestrained review. The application of the principle requiring the reviewing court to identify post-discipline conduct of the attorney to warrant enhancement of punishment is the correct judicial response.

Accordingly, the **Decision** of the Mississippi Supreme Court was based only upon facts which existed at the time of the tribunal hearing and imposition of discipline. The court's reasons for increased discipline were no different than that of the hearing tribunal. Mr. Robb was denied due process as provided by this Honorable Court's opinion in **North Carolina v. Pearce, supra**.

The above is sufficient for this Honorable Court to reverse the **Decision** of the Mississippi Supreme Court and reinstate the **Opinion** and **Judgment** of the Complaint Tribunal.

CUMULATIVE JUDICIAL ACTION

Mr. Robb also requests this Honorable Court to review the actual procedure followed by the Mississippi Supreme Court and determine whether a state court of last resort's procedure outside its own rules in an attorney disciplinary case denies the attorney procedural due process and bars enhancement of punishment. A review of the actual procedures followed by a state court of last resort is also determinative of motivation by the court in enhancing discipline. The standard of review of the motivation of the sentencing authority is set forth in **North Carolina v. Pearce**, 395 U.S. 711, 724-26 (1969, **Colten v. Commonwealth of Kentucky**, 407 U.S. 104, 116-118 (1972), **Chaffin v. Stynchcombe**, 412 U.S. 17, 25-27 (1973), and **Blackledge v. Perry**, 417 U.S. 21, 27-28 (1974).

Jurisdiction

As previously shown, the Mississippi Supreme Court (notwithstanding the Bar's opportunity and failure to produce the jurisdictional predicate) exercised jurisdiction without addressing by written opinion the issue raised by Mr. Robb as to the lack of jurisdictional predicate required by the court's disciplinary rules and judicial precedent. (App. 46a-51a) The Court usurped jurisdiction and increased the discipline imposed by the hearing tribunal thereby denying Petitioner due process of law.

Evidence

The court used evidence from two lower state court proceedings to make factually incorrect statements, to draw legally erroneous conclusions, and to enhance punishment based upon the statements and conclusions. (App. 7a) *Erroneous* facts are *no* facts. There must be facts to support a conclusion of law. **Moore v. White**, 137 So. 99, 100 (Miss. 1931).

The admission of evidence of one proceeding violated Mr. Robb 's constitutional right to confront the witnesses upon which the evidence was based. (R. 64-68) The evidence of the other proceeding addressed an issue not before the hearing tribunal and was admitted outside the rules of the court, the court's judicial precedent and the ABA disciplinary standards. (App. 37a) It was not until oral argument, that the court added the issue. The addition of issues not before the hearing tribunal is violative of procedural due process where no right to call witnesses or present rebuttal evidence is allowed. **Willner v. Committee on Character and Fitness**, 373 U.S. 96, 103-104 (1963) The court "summarily denied" Mr. Robb 's request to respond to the added issue and evidence.

The court's erroneous findings of fact is the equivalent of taking judicial notice of a fact or the employment of an incorrect legal standard. Judicial fairness and due process require that the parties who will be affected by the taking of such judicial notice must be afforded notice

thereof . **Varnell v. Green**, 512 So. 2d 903, 904 (Miss. 1987); **Eidt v. City of Natchez**, 421 So. 2d 1225, 1231 (Miss. 1982). **See Federal Rules of Evidence** 201(e); **Mississippi Rules of Evidence** 201(e).

Double Punishment

The court made findings of multiple rule violations which are cumulative to the facts and create an enhanced punishment. The legal principle of merger of the general violation into the more specific violation applies in disciplinary cases and bars enhanced punishment. **United States v. Scott**, 987 F.2d 261 (CA5 1993); **United States v. Cheers**, 439 F.2d 1097 (CA5 1971); and **Miles v. State**, 344 So.2d 133 (Miss. 1977).

This cumulative effect is equivalent to double punishment and deprived Mr. Robb of due process afforded by the Fifth and Fourteenth Amendments of the **Constitution of the United States of America** and a denial of equal protection afforded him by the Fourteenth Amendment of the **Constitution of the United States of America**. This issue was raised by Mr. Robb in his motion for rehearing (App. 2a)

Suspension Before Finality Of Decision

The court ordered a **Suspension** to become effective within a period shorter than allowed for a motion for rehearing and denied a motion to stay the suspension pending a decision on a motion for rehearing. The suspension was enhanced from a public reprimand to six months, requiring Mr. Robb to file a petition for reinstatement, thereby extending his suspension for a period in excess of six months until the bar investigates and the court rules on the petition. (App. 18a-19a)

The consistent denial of due process supports the existence of a retaliatory motive within the court and the need for this Honorable Court to apply the safeguards of **Pearce.**

Conclusion

For the above reasons, this petition for certiorari should be granted.

> The privilege of practicing law 'is not "a matter of grace and favor"' [**Willner v. Committee on Character and Fitness**, 373 U.S. 96, 102 (1963)]; on the contrary ... 'an attorney's license to practice [is] a "right" which cannot lightly or capriciously be taken from him.' ... [T]he power to withdraw that right 'ought always be exercised with great caution; and ought never to be exercised except in clear cases of misconduct, which affect the standing and character of the party as an attorney.' [**Ex parte Wall**, 107 U.S. 265, 288 (1883)] . . . .
>
> **Thalheim** at 389.

In the case before this Honorable Court, the Mississippi Supreme Court has abandoned the procedural due process restrictions upon it as announced in **Attorney G** and **Thalheim**. The instant case is contrary to the principles of law set by this Court in **Willner** and **Wall**, a decision rendered by the Fifth Circuit Court of Appeals and the protections afforded Mr. Robb by the Fifth and Fourteenth Amendments of the **Constitution of the United States of America**.

The action of the Mississippi Supreme Court represents an erosion of statutory and legal principle and an abuse of its exclusive and inherent power over attorney disciplinary matters.

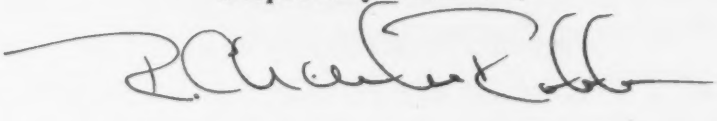
> An attorney disciplinary case
>
> is a quasi-criminal proceeding, wherein an experienced tribunal, consisting of a Circuit Judge and two lawyers appointed by this Court, recommend[s a certain discipline]. The tribunal who hear[s] [the] case [sees] the witnesses, observe[s] their demeanor, [sees] the defendant and his

> demeanor, hear[s] and applie[s] the facts to the law and ma[k]e their decision based on it. [The court] does not. With any other professional group involved in similar proceedings, [the court] ha[s] either affirmed or remanded for further review by their original "tribunal" or hearing agency. [Attorneys] are the only professional group that does not enjoy that privilege. Our constitution requires due process and trial by peers. See Miss. Const. art. III, 14 and 22. In view of the above [the tribunal should be affirmed].

Culpepper v. Mississippi State Bar, 588 So.2d 413, 422 (Miss. 1991), dissent of Justice McRae with Presiding Justice Lee joining.

The remedy in this case where the court did not have subject matter jurisdiction of the bar appeal is a reversal of the **Decision** and **Order of Suspension** and remand for entry of the **Opinion** and **Judgment** of the hearing tribunal. **Ex parte Bradley**, 7 Wall. (74 U.S) 364, 377 (1868); **Ex Parte McCardle**, 7 Wall. (74 U.S) 506, 514 (1868 Miss.); *also* 28 U.S.C. 2106.

Respectfully Submitted,



R. Charles Robb, Pro Se

Supreme Court, U.S.
FILED

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No. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1996

R. CHARLES ROBB, PETITIONER,

v.

THE MISSISSIPPI BAR, RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

APPENDIX

R. Charles Robb,
Pro Se

Post Office Box 10793
#5 Twelve Oaks Circle
Jackson, Mississippi
39209-0793
(601) 922-1111

December 18, 1996

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SUPREME COURT OF MISSISSIPPI

No. 93-BA-01051-SCT

THE MISSISSIPPI BAR

v.

R. CHARLES ROBB

DECIDED JUNE 20, 1996

EN BANC.

MILLS, JUSTICE, FOR THE COURT:

I.

INTRODUCTION

The Mississippi Bar filed a Formal complaint against R. Charles Robb, a Mississippi attorney, on August 19, 1992, alleging the violation of four provisions of the Mississippi Rules of Professional Conduct.

The Complaint Tribunal heard the case on April 8, 1993. It issued an opinion and judgment ruling against Robb on July 30, 1993.

The Mississippi Bar, disappointed with the Tribunal's ruling, filed a notice of appeal assigning the following issues:

1. Whether the public reprimand imposed by the Complaint Tribunal was a sufficient sanction given the attorney's deceitful misconduct.

2. Whether the Complaint Tribunal erred in failing to impose discipline after finding there was a violation of Rule 3.4, Mississippi Rules of Professional Conduct.

3. Whether the Complaint Tribunal erred in failing to find a violation of Rule 4.1, Mississippi Rules of Professional Conduct.

Robb cross-appealed the judgment against him assigning the following issues:

A. Are the Conclusions of Law drawn by the Tribunal in error as a matter of law with regard to Rule 3.4(c), Mississippi Rules of Professional Conduct?

B. Was the Tribunal correct in finding that Robb made no a false statement of material fact or law to a third party (Rule 4.1(a), MRPC) and if so does such finding merge the alleged violation of Rule 8.4(c), Mississippi Rules of Professional Conduct into such a finding?

C. Are the Conclusions of Law drawn by the Tribunal in error as a matter of law with regard to Rule 4.4, Mississippi Rules of Professional Conduct?

D. Was actual or constructive notice to Prisock, Mr. Benefield's representative, sufficient weight to change the proof to less than "clear and convincing" that Robb violated Rule 8.4(c), Mississippi Rules of Professional Conduct or any of the Mississippi Rules of Professional Conduct?

E. Do the alleged violations of Rule 8.4(a)&(d), Mississippi Rules of Professional Conduct merge into the specific violations charged?

F. Whether there were resultant damages from actions or inactions of Robb or did the damages result from the intervening actions or inactions of Prisock?

G. Is the weight of the evidence sufficient to support Prisock's actions or inactions to establish by "clear and convincing evidence" that Robb violated any Mississippi Rules of Professional Conduct which caused Mr. Benefield any damage? II.

FACTS

Keith Benefield and his wife, Lola "Cookie" Westbrook, were divorced in 1986 and he was ordered to pay her $1,300 per month for fifteen years as a part of their property settlement agreement. Benefield, who had moved to Alabama, became delinquent in his payments. Westbrook then hired attorney R. Charles Robb to represent her in collecting the arrearage. On May 3, 1990, Robb wrote Benefield a letter in an attempt to collect the alleged arrearage owed. Robb warned Benefield of

the prospect of contempt and imprisonment and asked that he make contact with Robb to discuss the matter. Benefield contacted Robb once but they were unable to resolve the dispute. Benefield then retained Kerry Prisock of Jackson to represent him.

Robb filed a contempt action against Benefield and made several efforts to set the matter for hearing. Prisock was successful in having the matter continued on three occasions. Finally, the parties appeared before Hinds County Chancellor Patricia D. Wise on January 28, 1991. It appeared to Chancellor Wise that the matter would be somewhat controversial and she decided not to hear it on her ex parte day. Chancellor Wise requested that the parties try to reach an agreement prior to the case being reset, else the court would have to decide the matter. The parties failed to reach an agreement and the case was reset for March 15, 1991.

On February 28, 1991, Prisock advised Benefield that he had to be out of town on March 15 and would obtain a continuance of the March 15 hearing. Robb objected to any continuance, as his attempts to resolve this matter had already been thrice delayed.

On March 11, 1991, according to Benefield, Prisock's secretary advised Benefield that a continuance was granted and a new setting would be scheduled when Prisock returned from his trip. Prisock filed an untimely motion for continuance on the same date.

Prisock's motion for continuance was never called up for hearing; no order of continuance was entered. To his credit, Robb advised the court that a motion for continuance had been filed in the case by Prisock. The hearing proceeded on March 15, 1991. Due to lack of opposition, Robb was successful in obtaining a contempt order against Benefield on April 3, 1991. Neither the Clerk of the Chancery Court nor Robb provided Prisock or Benefield with a copy of the order. The proposed order was prepared by Robb and submitted to the chancellor on March 19, 1991. Robb did not send a copy of the proposed order to

Prisock "for criticism as to form only" as required by Uniform Chancery Court Rule 5.04.

On April 5, 1991, Prisock notified Benefield that he had received a letter from Robb, dated April 5, 1991, requesting that Benefield appear in his office on a mutually agreeable date for document production and a deposition.

Prisock and Robb thereafter engaged in several telephone calls concerning the deposition and the possibility of settling the dispute. All discussions between the two attorneys, prior to the deposition date, concerned the amount of money Benefield was to pay his ex-wife. Prisock threatened to file a petition in bankruptcy for Benefield. Prisock was operating under the assumption that the parties would amicably resolve their differences and submit a proposed agreed order to the court. At no time did Robb inform Prisock that the court had already made a decision and that an order had already been entered. [fn1]

From April until August 17, 1991, the day of the purported deposition in Robb's office, Prisock's understanding was that he was to bring his client, and his client's tax records and other documents, to Robb's office for the purpose of negotiating a settlement of the dispute.

Prisock asked Robb if Prisock needed to get a court reporter for the August 17 deposition. Robb made it clear to him that Prisock did not need to make any arrangements for a court reporter, but did not expressly say that he would get one.

When Benefield and Prisock arrived at Robb's office on August 17, 1991, no court reporter was present. Prisock asked about the absence of a court reporter. Robb responded that he would make the deposition informal and would use only a tape recorder. Robb asked to see the documents brought by Benefield and asked if it was agreeable for him to make copies of them after the deposition. While the parties were engaged in a brief conversation regarding Benefield's financial condition and situation, the telephone rang. Robb answered with the phrase,

"We're not open today." Robb had previously arranged with the Hinds County Sheriff's Office to use this statement to them as a signal that Robb's quarry, Benefield, was in the office. Less than ten minutes later, two Hinds County deputy sheriffs arrived at Robb's office and arrested Benefield.

Prisock asked one of the deputies the basis for the arrest. The deputy showed him the contempt order which had been furnished by Robb. Prisock then turned to Robb at which time Mr. Robb handed him a copy of the order. Benefield inquired "What's going on?" as he was being arrested and escorted from the lawyer's office. Prisock assured his client that he would follow him shortly.

After the deputies left with Benefield, Prisock asked Robb, "Where do we go from her?" Robb said that the next step was for Benefield to pay $10,000 to purge himself of the contempt. Stunned by the events he had witnessed, Prisock did not argue with Robb.

Benefield was held at the Detention Center in Hinds County and then at the Penal Farm for eight days until he was able to purge himself of the contempt and obtain a release.

According to Prisock, had he known his client was going to be arrested, he would not have brought him to Robb's office. He had been led to believe that they were meeting in an effort to resolve the dispute out of court, without having any indication that the chancellor had already decided the matter. He stated that at no time over the four-month period preceding Benefield's arrest had Robb given him any indication that the matter had been decided by the chancellor.

On August 30, 1991, Benefield discharged Prisock and hired other counsel.

In September 1991, Robb proceeded to have Benefield's wages at Prudential Insurance garnished.

On September 30, 1991, Chancellor Wise granted a stay of a second motion for contempt filed by Robb and appointed Special Master Charles Brewer to hear the case and to make a recommendation.

On October 29, 1991, Brewer filed a report in which he recommended setting aside the original order obtained by Robb as a result of the hearing of March 15, 1991, and entered on April 3, 1991. In the report, Brewer found that Prisock had filed a motion for continuance, but that he never called it up for hearing, and that he and his secretary were under the impression that a continuance had been granted when it had not; that Robb had informed Prisock that he did not agree to a continuance; that Robb was not notified of a setting on the motion, and did not receive an order of continuance from the court; that consequently Robb proceeded with the hearing on March 15, though he did advise the court that Prisock had filed a motion but that no order was entered; that the Court granted a civil contempt order which was entered on April 3, 1991; and that negotiations continued between Robb and Prisock without Prisock ever being advised by anyone that an order had been entered.

Brewer further found that Robb failed to comply with Uniform Chancery Court Rule 5.04, which required him to submit a proposed judgment/order to opposing counsel for criticism as to form, and then to the chancellor within ten days after being directed to do so; that Prisock should have been more diligent in securing the continuance before leaving town; and that under the circumstances, the order of April 3, 1991, should be set aside and the money paid held in abeyance until a hearing on the merits. Chancellor Wise entered an order setting aside the order for civil contempt on November 13, 1991.

After the contempt order was set aside, Benefield sued Robb for damages on the grounds that Robb had fraudulently lured him to Mississippi and had under false pretenses caused his incarceration. Robb settled this action by paying Benefield $8,000.00.

Robb's client, Westbrook, ultimately lost her claim for back payments owed in the amount of $58,900.17 and future obligations owed to her of $135,000.00, as a result of the lower court's finding that Robb's efforts to execute on the contempt order were improper. It appears from the record that Benefield did pay her $6,000.00 as a final settlement between the two.

Finally, in April of 1993, after having paid $8,000.00 to Benefield to settle the personal action against him, Robb filed a pro se complaint against his client, Westbrook, seeking damages in the amount of $8,000.00, plus attorney's fees of $3,750.00 and out-of-pocket expenses of $650.00, for a total of $12,400.00. After extensive motion hearings, this matter was dismissed by agreed order in May of 1994.

At his hearing before the Complaint Tribunal, Robb objected to testifying and sought to invoke the Fifth Amendment. This objection was overruled and following the hearing of evidence the Complaint Tribunal found as follows:

By clear and convincing evidence, Robb has violated the following Rules of Professional Conduct for the Bar:

A. Rule 3.4(c), which provides that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

B. Rule 4.4, which provides that in representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person; and

C. Rule 8.4(c), which provides that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation, in that he engaged in conduct involving deceit and misrepresentation.

Additionally, the evidence is clear and convincing that by engaging in conduct involving deceit and misrepresentation, Robb thereby violated Rule 8.4(a), which provides that a lawyer shall not violate a rule

of professional conduct, and Rule 8.4(d), which provides that a lawyer shall not engage in conduct prejudicial to the administration of justice.

By clear and convincing evidence, it is the opinion of this Tribunal that Robb has demonstrated unprofessional and unethical conduct which constitutes cause for the imposition of discipline.

The Complaint Tribunal ordered a public reprimand and assessed costs of $69.83 against Robb. The Mississippi Bar appealed the decision of the Complaint Tribunal seeking more severe discipline in the form of a lengthy suspension. Robb cross-appealed seeking reversal of the findings of the Complaint Tribunal.

III.

STANDARD OF REVIEW

"The Supreme Court of Mississippi (the Court) has exclusive and inherent jurisdiction of matters pertaining to attorney discipline, reinstatement, and appointment of receivers for suspended and disbarred attorneys. . . . Rule 1 of the Rules of Discipline for the Mississippi State Bar (1984). On appeal, this Court "shall review the entire record and the findings and conclusions of the Tribunal, and shall render such orders as the Court may find appropriate." **Foote v. Mississippi State Bar Association**, 517 So. 2d 561, 564 (Miss. 1987) (quoting Rule 9.4 of the Mississippi Rules of Professional Conduct (1984)). When reviewing disciplinary matters, this Court reviews the evidence de novo and no substantial evidence or manifest error rule shields the Tribunal from scrutiny. **Watkins v. Mississippi Bar**, 589 So. 2d 660, 664 (Miss. 1991); **Foote**, 517 So. 2d 1120, 1124 (Miss. 1987); **Mississippi State Board of Psychological Examiners v. Hosford**, 508 So. 2d 1049, 1054 n. 4 (Miss. 1987); **Vining v. Mississippi State Bar Association**, 508 So. 2d 1047, 1049 (Miss.1987). However, this Court is not prohibited from giving deference to the findings of the Tribunal. **Mississippi State Bar v. Odom**, 566 So. 2d 712, 714 (Miss. 1990).

While the review of evidence is de novo, deference is given to the Tribunal's findings due to its exclusive opportunity to observe the demeanor and attitude of the witnesses, including the attorney, which is vital in weighing the evidence. **Broome v. Mississippi Bar**, 603 So. 2d 349, 353 (Miss. 1992); **Mississippi State Bar v. Strickland**, 492 So. 2d 567 (Miss. 1986).

Punishment for any violation of the Rules of Discipline is considered and imposed on a case-by-case basis and is not governed by a set standard. **Hosford**, 508 So. 2d at 1049; **A Mississippi Attorney v. Mississippi State Bar**, 453 So. 2d 1023 (Miss. 1984). This Court "will not hesitate to impose substantial sanctions upon an attorney for any act which evinces want of personal honesty and integrity or renders such attorney unworthy of public confidence." **Foote**, 517 So. 2d at 564; **Brumfield v. Mississippi State Bar Association**, 497 So. 2d 800, 808 (Miss. 1986).

IV.

LAW

The dispositive issues in this case are discussed as follows:

A.

Whether the Complaint Tribunal's Conclusions of Law are correct in regards to finding a Rule 4.4 MRPC violation has been committed?

Rule 4.4 of the Mississippi Rules of Professional Conduct states:

Rule 4.4 RESPECT FOR RIGHTS OF THIRD PERSONS

In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such person. Rule 4.4, Mississippi Rules of Professional Conduct (M.R.C.P.). The comment thereto provides in part:

Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons.. . .

Comment to Rule 4.4, M.R.C.P.

The Complaint Tribunal found that:

Robb . . . violated Rule 4.4 in that he had a substantial purpose to burden Benefield. And that -- to put it in plain language, that a substantial purpose of Robb's was to get Benefield back in the state of Mississippi where he could have him incarcerated and thereby burdening him with being incarcerated.

This Court agrees with the Tribunal's conclusion. It is clear that on August 17, 1991, at the time of the deposition, the only substantial purpose of Robb was to have Benefield incarcerated and then released, only if Benefield could come up with $10,000.00 to purge himself of the contempt.

Moreover, it seems odd that Robb would argue that he had another purpose, to depose Benefield, when in fact the alleged deposition only took a few minutes. There was not a court reporter present, nor did Robb offer into evidence any part of the tape recorded deposition. In fact, Robb had never discussed the contempt order with Prisock, nor had he ever introduced it as leverage in negotiating his client's position. More specifically, Robb did not even discuss the possibility of a settlement with Prisock at the deposition.

This Court concludes that Robb exhibited no compelling set of facts which would indicate there was another means for using the contempt order, nor was there another substantial purpose at the time of the alleged deposition other than to embarrass and burden Benefield. Therefore, it is clear that Robb intentionally violated Rule 4.4, M.R.C.P.

B.

Given the deceitful conduct of Robb,

the Complaint Tribunal erred in only issuing a public reprimand.

The present case is replete with violations of Rule 8.4(c) by Robb. His first act of deceit was presenting an unapproved order to Chancellor Wise, which also violated Rules 8.4 (a) and (d) of the M.R.C.P.. Robb continued his acts of deceit by luring Benefield to his office to have him arrested.

Robb was deceitful in his dealings with Prisock. As evidenced by Robb's letter to Prisock requesting deposition dates and the follow-up phone call discussing the deposition dates and a court reporter, Robb was deceitful and misrepresented his intentions. Robb was aware that Prisock had no knowledge of the contempt order and that Prisock and Benefield were acting on the good faith assumption that the parties were trying to reach a settlement.

On July 31, 1991, when Robb notified the sheriff's department of Benefield's upcoming presence on August 17, 1991, he agreed to a "code" to let the deputy sheriff know of Benefield's presence. This was deceitful and indicates personal dishonesty and a lack of integrity. Misrepresentations by omission are as egregious as overt misrepresentations.

In **Mississippi Bar v. Mathis**, 620 So. 2d 1213, 1219 (Miss. 1993), the Court followed the rule that "[t]his Court will not hesitate to impose substantial sanctions upon an attorney for any act which evinces want of personal honesty and integrity or renders such attorney unworthy of public confidence," quoting **Foote v. Mississippi State Bar**, 618 So. 2d 64, 67 (Miss. 1993).

In **Mathis** a civil action for bad faith denial of insurance was pending. Mathis was representing the family of the insured. He failed to disclose to the Court or opposing counsel that an autopsy had been performed. The Bar alleged that this conduct constituted a violation of

DR1-102(A)(1), (4), (5), (6), of the Code of Professional Responsibility and Rule 8.4(a), (c) and (d) of the M.R.C.P. 620 So. 2d. at 1220.

The Complaint Tribunal found that Mathis was guilty of violating Rule 3.3(a)(1) and (4) of the M.R.C.P. and the statutory oath of attorneys. A public reprimand was imposed. The Bar appealed on the grounds that a more severe penalty should be imposed. The Supreme Court conducted a de novo review and found that Mathis had violated Rules 8.4(a), (c) and (d) of the M.R.C.P. and DR1-102(A)(1), (4) and (6) of the Code of Professional Responsibility. The Court imposed a one-year suspension from the practice of law.

In determining whether the Complaint Tribunal had imposed the appropriate discipline, the Court stated that the purposes of punishment for ethical violations were (1) to punish the wrongdoer, (2) to deter further violations on the part of the offender and the general community of lawyers, and (3) to reinforce the confidence of the public in the ability of the legal profession to govern itself. The third purpose is important because the profession "assumes the responsibility of governing its members. Therefore, the public's confidence and faith in the integrity of the entire Bar is dependent upon our willingness to impose appropriate sanctions on our members who have violated the Code of Professional Responsibility" (now Mississippi Rules of Professional Conduct). Id. at 1222, quoting **Pitts v. Mississippi State Bar Assoc.**, 462 So. 2d 340, 343 (Miss. 1985).

When imposing discipline, this Court considers several factors. They are:

(1) Nature of the misconduct involved;

(2) Need to deter similar misconduct;

(3) Preservation of dignity and reputation of the legal profession;

(4) Protection of the public; and

(5) Sanctions imposed in similar cases.

Mathis, 620 at 1222; **Mississippi State Bar v. Blackmon**, 600 So. 2d 166, 173 (Miss. 1992), and **Mississippi State Bar v. Smith**, 577 So. 2d 1249, 1251 (Miss. 1991).

In reviewing Mathis' conduct and the sanction imposed, the Supreme Court found that "the nature of Mathis' conduct was deceit. The need to deter such acts is clear and pressing." 620 So. 2d at 1222.

In the instant case, the Tribunal found that Robb had engaged in conduct involving deceit and misrepresentation, but only issued a public reprimand.

Deceit, whether visited on a court or an attorney who is an officer of the court or a private citizen, should be dealt with in a firm manner. To allow an attorney to act in such a manner without imposing appropriate sanctions is tantamount to condoning acts of deceit.

On many occasions, the Court has not hesitated to impose suspension in cases involving acts of dishonesty, fraud, deceit, and/or misrepresentation. It has held that such acts are grounds for disbarment or suspension. **See Clark v. Mississippi State Bar Assoc.**, 471 So. 2d 352 (Miss.. 1985) (disbarred for misappropriation of funds); **Brumfield v. Mississippi State Bar Assoc.**, 497 So. 2d 800 (Miss. 1986) (disbarred for defrauding family members); **Culpepper v. Mississippi State Bar**, 588 So. 2d 413 (Miss. 1991) (disbarred for fraudulent acts). **See also Underwood v. Mississippi Bar**, 618 So. 2d 64 (Miss. 1993) (one-year suspension for dishonesty and fraud; lying to client); **Mathis v. Mississippi Bar**, 637 So. 2d 840 (Miss. 1994) (six-month suspension; failure to turn over funds to court); **Mississippi Bar v. Mathis**, 620 So. 2d 1213 (Miss. 1993) (one-year suspension; deceit and fraud).

C.

A disciplinary sanction should have been issued once the Tribunal found a violation of Rule 3.4 of the Rules of Professional Conduct.

The Complaint Tribunal found that Robb had violated Rule 3.4(c) of the Mississippi Rules of Professional Conduct, which provides in part:

(c) A lawyer shall not . . . knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

In **Mathes v. Mississippi Bar**, 637 So. 2d 840 (Miss. 1994), Court held "[t]he need to deter . . . attorneys from ignoring court orders is self-evident. Also self-evident is the damage such disobedience causes to the legal profession, and the need to protect the public from attorneys who would fail to respect a court's authority." Id. at 848.

In **Mathes**, the attorney failed to follow a court order requiring him to turn over funds to the bankruptcy trustee. The Court ordered a six-month suspension from the practice of law.

In the present case, Robb violated Rule 3.4(c). He failed to follow Rule 5.04 of the Uniform Chancery Court Rules. Whether one fails to follow a court order or a court rule, punishment should be meted out. As this Court stated in **Mathis**, attorneys need to be deterred from ignoring court orders.

Robb tried to relieve himself of his duty by placing blame on Prisock. The Tribunal correctly found that Prisock failed to act in the best interests of his client. However, Robb's actions can not be excused by the indiscretions of another attorney. Robb failed to follow a specific rule of court in not submitting the order to Prisock for his approval. Had he done so, court time would not have been wasted and a special master would not have been needed. Robb's initial failure to follow a rule of the court, which could have been cured by timely service of the order on Prisock, or by other remedial measures, was compounded by his ensuing acts of deceit and misrepresentation, warrants the imposition of a public reprimand and a lengthy suspension.

D.

The Tribunal erred in not finding a violation of Rule 4.1.

Rule 4.1 of the Rules of Professional Conduct states in part: "In the course of representing a client, a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person . . . ."

Robb, through his correspondence with Prisock, alleged that a deposition was to be taken. He was aware of the ignorance of Prisock and Benefield of the entry of the contempt order. Robb's purpose in having Benefield come to Mississippi was to have him arrested, not to take a deposition. This was evidenced by his communication with the sheriff's department well before the August deposition.

Robb misled Prisock and Benefield by not revealing relevant facts to them. Whether misleading or actually making a false statement, the acts and the results are the same -- a violation of Rule 4.1 occurred. This Court has the authority to so find and to issue sanctions accordingly. The legal profession is on a downward slide. Robb's actions, and similar "Rambo" tactics used by others in the legal profession, are part of that slide. The end does not justify the means. True, Benefield had an obligation to his ex-wife. He had not kept that obligation. However, the "means" used by Robb to accomplish the "end" cannot be tolerated. Our society is one of law, not expediency. This message must be repeated at every opportunity. This case presents such an opportunity. Robb deserves to be sanctioned for this violation as well as his other violations of the Rules of Professional Conduct.

E.

Robb's Motions to Strike

Robb moved this Court to strike from the findings of fact all references to matters concerning the report of the special master and the order entered thereupon. Robb asserts that before the time for appeal ran on the report and order, he was discharged as attorney for Westbrook. He argued that his substantive and procedural due process rights to challenge the report and order were denied.

This Court reviews de novo the evidence in an attorney disciplinary proceeding. Mathis, 620 So. 2d at 1219. The special master found Robb in violation of Rule 5.04 Uniform Chancery Court Rules for failing to present opposing council with a copy of the contempt order for criticism as to form only. Robb admits that he did not present Prisock with a copy of the contempt order.

Robb also asserts that the Mississippi Bar did not include a corresponding reference to excerpts filed in this Court with respect to the record and the transcripts and seeks to strike the Bar's briefs. This motion is without merit and borders on frivolity.

V.

CROSS-APPEAL

After review of the assignments of error presented by Robb on cross-appeal, we determine his claims to be meritless and hereby deny the cross-appeal.

VI.

CONCLUSION

Before the Complaint Tribunal and this Court, Robb has sought at every point to blame others for his acts of deceit. His failure to furnish obvious information to counsel opposite and his deceit in arranging for the arrest of Benefield merit a suspension from the practice of law. Further, his acts following the arrest of Benefield bring disfavor upon the legal profession and must be considered in imposing sanctions. Finally, his demeanor and attitude before this Court, and his apparent disregard for the rights of others, substantiate this Court's opinion that Robb should be suspended from the practice of law. Therefore, we hereby find that R. Charles Robb should be suspended from the practice of law for a period of six months.

ON DIRECT APPEAL: REVERSED AND RENDERED. R. CHARLES ROBB IS SUSPENDED FROM THE PRACTICE OF

LAW FOR SIX MONTHS. ORDER OF SUSPENSION ENTERED.

ON CROSS-APPEAL: DENIED.

LEE, C.J., PRATHER AND SULLIVAN, P.JJ., PITTMAN, BANKS, ROBERTS AND SMITH, JJ., CONCUR. McRAE, J., DISSENTS WITH SEPARATE WRITTEN OPINION.

[fn1] Robb further violated Section 13-1-263 of the Mississippi Code of 1972, as amended, which states as follows, regarding the examination of a non-resident judgment debtor: ". . . a certified copy of the judgment shall be attached to the written Motion for Examination."

SUPREME COURT OF MISSISSIPPI

No. 93-BA-01051-SCT

THE MISSISSIPPI BAR

v.

R. CHARLES ROBB

McRAE, JUSTICE, DISSENTING:

In order to remain consistent with past decisions concerning attorney discipline, the conduct forming the basis of the charges against Robb should warrant no more than two months suspension from the practice of law. See **Mississippi State Bar v. Smith**, 577 So. 2d 1249 (Miss. 1991) (ordering sixty (60) day suspension and period of probation to attorney for depositing proceeds of wrongful death settlement into personal account and distributing money to beneficiaries without court permission); **Pitts v. Mississippi State Bar Ass'n**, 462 So. 2d 340, 341 (Miss. 1985) (ordering thirty (30) day suspension and public reprimand for attorney's delayed deposit of client's insurance check into savings account in violation of court order); see also **Goodsell v. Mississippi Bar**, 667 So. 2d 7, 13-14 (Miss. 1996) (McRae, J., dissenting,

joined by Lee, C.J., and Roberts, J.) (urging this Court to be consistent in its rulings on matters of attorney discipline). Accordingly, I dissent

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SUPREME COURT OF MISSISSIPPI

No. 93-BA-01051-SCT

THE MISSISSIPPI BAR

v.

R. CHARLES ROBB

DECIDED JUNE 20, 1996

EN BANC.

MILLS, JUSTICE, FOR THE COURT:

ORDER OF SUSPENSION

This cause came before the Mississippi Supreme Court by appeal of the Mississippi Bar following the July 30, 1993, judgment of the Complaint Tribunal against R. Charles Robb wherein the Complaint Tribunal ordered a public reprimand and assessed costs. This Court having fully read and considered the entire record finds that Robb should be suspended from the practice of law for a period of six months.

IT IS THEREFORE ORDERED , ADJUDGED AND DECREED as follows:

1. The Clerk of the Supreme Court of Mississippi shall immediately forward an attested copy of this Order of Suspension to the judges of the circuit, chancery and county courts of the districts where Robb resides, with instructions to include a copy of this judgment upon the minutes of their respective courts;

2. The Clerk of the Supreme Court of Mississippi shall immediately forward an attested copy of this Order of Suspension to the Clerks of the United States District Courts in and for Mississippi, to the Clerk of the Fifth Circuit Court of Appeals, and to the Clerk of the Supreme Court of the United States.

3. This Order of Suspension shall be effective beginning July 1, 1996.

SO ORDERED, ADJUDGED AND DECREED this the 20th day of June, 1996.

S/S MICHAEL P. MILLS, JUSTICE FOR THE COURT

IN THE SUPREME COURT OF MISSISSIPPI
(BEFORE A COMPLAINT TRIBUNAL)

THE MISSISSIPPI BAR	COMPLAINANT
VS.	92-B-845
R. CHARLES ROBB	RESPONDENT

BEFORE A COMPLAINT TRIBUNAL
CONSISTING OF:
JUDGE T. HARRIS SULLIVAN, PRESIDING JUDGE
HONORABLE DAVID S. CRAWFORD
HONORABLE RONALD L. WHITTINGTON

OPINION AND JUDGMENT

THIS MATTER CAME ON for consideration by this Tribunal on the Formal Complaint filed by the Complainant, The Mississippi Bar ("the Bar"), against Respondent, R. Charles Robb ("Mr. Robb"). The Bar was represented by the Honorable Michael B. Martz, General Counsel, and the Honorable Charles J. Mikhail, Special Assistant General Counsel. Mr. Robb appeared pro se.

FINDINGS OF FACT

1. The Formal Complaint in this cause was filed on August 19, 1992. Mr. Robb's Answer was filed on November 9, 1992. At all times herein mentioned, Mr. Robb was a member of the Bar subject to the disciplinary jurisdiction of the Supreme Court of Mississippi and its designated agencies.

2. The Tribunal has jurisdiction over the parties and subject matter hereto.

3. The Bar has incurred the sum of $69.83 in costs and expenses which preceded the filing of the Formal Complaint herein, as well as additional costs and expenses occasioned by the litigation of the instant Formal Complaint.

4. Keith Benefield ("Mr. Benefield") and his wife, Lola "Cookie" Westbrook, were divorced in 1986 and he was ordered to pay her $1,300 per month for 15 years as a part of their property settlement agreement. On May 3, 1990, Mr. Robb wrote to Mr. Benefield a letter in an attempt to collect the alleged arrearage owed by Mr. Benefield, warning him of the prospect of contempt and imprisonment and asking that he make contact with Mr. Robb to discuss the matter. Mr. Benefield contacted Mr. Robb once but they were unable to resolve the dispute. Mr. Benefield then retained the Honorable Kerry Prisock ("Mr. Prisock"), of Jackson, Mississippi, to represent him.

5. At a court appearance on January 28, 1991, after previous settings, before Hinds County Chancellor Patricia D. Wise, Judge Wise requested that the parties try to reach an agreement prior to the case being re-set else the court would have to decide the matter, and the case was re-set for March 15, 1991. Mr. Robb objected to any continuance of the matter, including the March 15 setting.

6. On March 4, 1991, Mr. Prisock advised Mr. Benefield that he had to be out of town on March 15 and would obtain a continuance of the March 15 hearing.

7. On March 11, 1991, according to Mr. Benefield, Mr. Prisock's secretary advised Mr. Benefield that a continuance was granted and a new setting would be scheduled when Mr. Prisock returned from his trip.

8. Mr. Prisock's Motion for Continuance was never called for hearing, no Order of Continuance was entered and the hearing took place on March 15, 1991, resulting in an Order of Civil Contempt being entered on April 3, 1991, against Mr. Benefield. Neither the Clerk of

the Chancery Court, the Judge, nor Mr. Robb provided Mr. Prisock or Mr. Benefield with a copy of the Order. The Proposed Order had been submitted to the Chancellor on or about March 19, 1991, and was unsigned by Mr. Prisock as approving as to form.

9. On April 5, 1991, Mr. Benefield was notified by Mr. Prisock that he (Mr. Prisock) had received a letter from Mr. Robb, dated April 5, 1991, requesting that Mr. Benefield appear in his office on a mutually agreeable date for document production and a deposition. The date later agreed upon was on Saturday, August 17, 1991.

10. From the time that Mr. Prisock received Mr. Robb's letter of April 5, 1991, about Mr. Robb's desire to have documents produced and to depose Mr. Benefield, Mr. Prisock talked to Mr. Robb several times over the telephone and nothing was said about the Order of Civil Contempt or the outcome of the hearing on March 15. All discussions between them revolved around attempting to work out the amount of money Mr. Benefield was to pay his ex-wife. Mr. Prisock was operating on the assumption, and dealing with Mr. Robb based upon an understanding, that only if they could not work out the dispute would they present the matter to the court for a decision. Mr. Prisock's assumption was undisclosed to Mr. Robb. At no time did Mr. Robb inform Mr. Prisock that the court had already made a decision and that an order had already been entered. Mr. Prisock never inquired about the outcome of the hearing or his continuance motion.

11. From April until August 17, 1991, the day the purported deposition in Mr. Robb's office, Mr. Prisock's understanding was that he was to bring his client and his client's tax records and other documents in further efforts to resolve the dispute out of court; and if the efforts failed, they would go back to court and have Judge Wise decide the matter.

12. In attempting to schedule the deposition for August 17, 1991, Mr. Prisock asked Mr. Robb if he (Mr. Prisock) needed to get a court

reported. Mr. Robb made it clear to him that he did not need to make any arrangements for a court reported but did not expressly say that he (Mr. Robb) would get one.

13. When Mr. Benefield and Mr. Prisock arrived at Mr. Robb's office on August 17, 1991, no court reported was present and no tape recorder was visible. Mr. Robb greeted them and asked if they wanted any beverages. They did not.

14. Mr. Prisock then made a remark about a court reporter for the deposition at which time Mr. Robb responded that he would make this informal and set up a tape recorder. Mr. Robb asked to see the documents and asked if it was agreeable for him to make copies of them after the deposition. They had a brief conversation regarding Mr. Benefield's financial condition and situation. The telephone rang, and Mr. Robb answered it. Mr. Prisock and the Bar do not recall the content of the telephone conversation. Less than ten minutes later, two Hinds County Deputy Sheriffs arrived and arrested Mr. Benefield.

15. As Mr. Benefield was being arrested, Mr. Prisock asked one of the deputies the basis for the arrest, at which time the deputy showed him the Order of Civil Contempt. Mr. Prisock then turned to Mr. Robb at which time Mr. Robb handed him a copy of the Order. Mr. Benefield asked what was going on and Mr. Prisock assured him that he would follow him shortly.

16. After deputies left with Mr. Benefield, Mr. Prisock asked Mr. Robb, "Where do we go from here?" Mr. Robb said that the next step was for Mr. Benefield to pay $10,000 to purge himself of contempt. Mr. Prisock did not argue with Mr. Robb inasmuch as he was still stunned and surprised by what had happened and the foremost matter on his mind was to see about getting Mr. Benefield out of jail. Mr. Prisock did not seek a hearing with the Hinds County Chancellor to get Mr. Benefield released nor did he file an appeal, nor did he pursue a habeas

corpus action, nor did he attempt to post a bond for the Judgment nor did he file a petition for relief in bankruptcy court.

17. Mr. Benefield was held at the Detention Center in Hinds County and then at the Penal Farm for eight days (until August 25, 1991), and only after his seventy-one year parents took a second mortgage on their home and paid the $10,000 was Mr. Benefield able to purge himself of contempt and obtain a release.

18. According to Mr. Prisock, had he known his client was going to be arrested, he would not have brought him to Mr. Robb's office. He came there believing that they were meeting in an effort to resolve the dispute out of court, without having any indication that the Court had already decided the matter. And, at no time over the four-month period did Mr. Robb give him any indication that the matter had been decided by the Court.

19. When Mr. Prisock returned from out of town in March 1991, he did not follow up on his Motion for Continuance or examine the court file in the matter, which would have put him on notice of the Order of Civil Contempt. He did not ask Mr. Robb about the outcome of the March 15 hearing inasmuch as he was under the impression that it had been continued. Upon return from out of town, he asked Mr. Robb what they were going to do to resolve the problem between their clients and negotiations continued; but, at no time did Mr. Robb hint that a hearing had already taken place and an Order entered.

20. In September 1991, Mr. Robb proceeded to have Mr. Benefield's wages at Prudential Insurance garnished.

21. On August 30, 1991, Mr. Benefield discharged Mr. Prisock and hired Honorable Mike Malouf of Jackson to represent him.

22. On September 30, 1991, Judge Wise granted a stay of the Motion for Continuance and Garnishment and appointed Special Master Charles Brewer to hear the case and to make a recommendation.

23. On October 29, 1991, Mr. Brewer filed a report in which he recommended setting aside the original Order of Civil Contempt obtained by Mr. Robb as a result of the hearing of March 15, 1991, and entered on April 3, 1991. In the report, Mr. Brewer found that Mr. Prisock filed a Motion for Continuance but never set or called it up for hearing, and that he and his secretary were under the impression that a continuance had been granted when it had not; that Mr. Robb informed Mr. Prisock that he did not agree to a continuance and that Mr. Robb was not notified of a setting on the Motion and did not receive an Order of Continuance from the court; that consequently, Mr. Robb proceeded with the hearing on March 15, though he did advise the court that Mr. Prisock had filed a Motion for Continuance but that no Order was entered; that the Court granted a Motion for Civil Contempt and entered an Order to that effect on April 3, 1991; that negotiations continued between Mr. Robb without Mr. Prisock being aware, and without Mr. Robb, the Clerk, or the Judge informing Mr. Prisock, of the April 3, 1991 Order or providing him a copy of it.

24. Mr. Brewer further found that Mr. Robb failed to comply with Uniform Chancery Court Rule 5.04, which provides that in litigated actions, he had to submit a proposed Judgment/Order to opposing counsel (Mr. Prisock) for objection as to form and then to the Judge within ten days after being directed to do so; Mr. Prisock should have been more diligent in securing the continuance before leaving town; and that under the circumstances, the Order of April 3, 1991, should be set aside and the money paid held in abeyance until a hearing on the merits. Judge Wise entered an order Setting Aside the Order of Civil Contempt on November 13, 1991.

CONCLUSION OF LAW

By clear and convincing evidence, Mr. Robb has violated the following Rules of Professional Conduct for the Bar:

A. Rule 3.4 (c), which provides that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

B. Rule 4.4, which provides that in representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person; and

C. Rule 8.4(c), which provides that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation, in that he engaged in conduct involving deceit and misrepresentation.

Additionally, the evidence is clear and convincing that by engaging in conduct involving deceit and misrepresentation, Mr. Robb violated Rule 8.4(a), which provides that a lawyer shall not violate a rule of professional conduct and Rule 8.4(d), which provides that a lawyer shall not engage in conduct that is prejudicial to the administration of justice.

By clear and convincing evidence, it is the opinion of this Tribunal that Mr. Robb has demonstrated unprofessional and unethical conduct which constitutes cause for the imposition of discipline.

JUDGMENT

Based upon the foregoing Findings of Fact and Conclusions of Law, the Judgment of the Tribunal is as follows:

1. Mr. Robb shall be and is hereby issued a **PUBLIC REPRIMAND** and this Opinion and Judgment shall constitute such Public Reprimand. However, no discipline is being imposed for Mr. Robb's violation of Rule 3.4(c). This Public Reprimand is being imposed for his violation of Rules 4.4 and 8.4(a, c & d).

2. Mr. Robb shall pay unto the Bar the sum of $69.83 in costs and expenses incurred in the investigation which proceeded the filing of the Formal Complaint, as well as reasonable and necessary costs and expenses occasioned by the litigation of the Formal Complaint. To recover

those costs and expenses, the Bar shall file its Motion for Costs and Expenses and present same to this Tribunal.

3. When this Opinion and Judgment becomes final, the Clerk of the Mississippi Supreme Court shall cause an attested copy of this Opinion and Judgment to be forwarded to the Senior Circuit Court Judge in and for Warren County, Mississippi, together with a directive that Mr. Robb be ordered to appear before said Circuit Court on the first day of the term convening next after the Public Reprimand become final, or on some other similar day when the maximum number of the Bar and of the public are present, at which time this Public Reprimand shall be read by the Senior Judge or his designee.

4. The Clerk of the Mississippi Supreme Court shall immediately forward to the attorneys of record for the parties herein a copy of this Opinion and Judgment.

5. When this Opinion and Judgment becomes final, the Clerk of the Mississippi Supreme Court shall (1) forward an attested copy of this Opinion and Judgment to the Clerks of the Circuit, Chancery and County Courts in and for Warren County, Mississippi, with instructions to said Senior Judges of each Court to include a copy of this Opinion and Judgment upon the minutes of their respective Courts; (2) forward attested copies to the Clerks of the United States District Courts for the Northern and Southern Districts of Mississippi, to the Clerk of the United States Court of Appeals for the Fifth Circuit, and to the Clerk of the Supreme Court of the United States; and (3) forward an attested copy of same to the Executive Director of The Mississippi Bar at Post Office Box 2168, Jackson, MS 39225-2168; and to the original complaining party who brought the matter before the Bar, Keith Mr. Benefield, at 2217 Colony Drive, Huntsville, AL 35802.

6. When this Opinion and Judgment is filed with the Clerk of the Mississippi Supreme Court, the contents of Confidential Misc. No. 92-B-845, together with this Opinion and Judgment, shall in all respects

be a public record, and this Opinion and Judgment shall remain in full force and effect until further Order of the Supreme Court of Mississippi.

SO ORDERED, ADJUDGED AND DECREED this the 30th day of July, 1993, as rendered on April 8, 1993.

S/S JUDGE T. HARRIS SULLIVAN
Presiding Judge
S/S HON. DAVID S. CRAWFORD
S/S HON. RONALD L. WHITTINGTON

AGREED AS TO FORM:

THE MISSISSIPPI BAR
BY: S/S CHARLES J. MIKHAIL
Attorney for Complainant
The Mississippi Bar

R. CHARLES ROBB
BY: S/S R. CHARLES ROBB
Pro Se

Supreme Court Of Mississippi
Linda Stone, Clerk
Third Floor Gartin Building
450 High Street
P. O. Box 249
Jackson, Mississippi 39205-0249

September 19, 1996

Michael B. Martz
MS STATE BAR
P. O. BOX 2168
Jackson, MS 29225-2168

This is to advise you that the Mississippi Supreme Court rendered the following decision on the 19th day of September, 1996.

Supreme Court Case #93-BA-1051
Trial Court Case #92B845

The Mississippi Bar

vs.

R. Charles Robb

Motion for Rehearing denied. McRae, J., would grant.

Appellee/Cross-Appellant's Motion to Strike The Mississippi Bar's Response to Appellee/Cross-Appellant's Motion for Rehearing granted. Order entered.

Supreme Court Clerk

lwp

ccs: R. Charles Robb

NOTICE TO CHANCERY/CIRCUIT/COUNTY COURT CLERKS
If any original of any exhibit other than photos was sent to the Supreme Court Clerk and should now be returned to you, please advise this office in writing immediately.

Supreme Court Of Mississippi
Post Office Box 117
Jackson, Mississippi 39205
Telephone (601) 359-3697
Fax (601) 359-2443

Dan M. Lee
Chief Justice

Lenore L. Prather
Michael D. Sullivan
Presiding Justices

Edwin Lloyd Pittman
Fred L. Banks, Jr.
Chuck McRae
James L. Roberts, Jr.
James W. Smith, Jr.
Michael P. Mills
Justices

July 29, 1996

Charles J. Mikhail
Attorney at Law
740 Wiggins Circle
Pascagoula, MS 39581

Michael B. Martz
MS STATE BAR
P. O. BOX 2168
Jackson, MS 29225-2168

Re: The MS Bar vs. R. Charles Robb

No. 93-BA-1051

Dear Counsel:

The Court desires a reply to the Petition for Rehearing filed in the above styled cause.

This is to advise you that you have ten (10) days within which to file your reply to the petition, and, in accordance with Supreme Court Rule 40(b), it is requested that nine (9) copies thereof be filed with the Clerk of the Court.

Sincerely yours,
FOR THE COURT
S/S STEVE KIRCHMAYR
Court Administrator

cc: Supreme Court Clerk
R. Charles Robb

In The Chancery Court Of The First Judicial District
Of Hinds County, Mississippi

In The Matter Of The Dissolution Of The
Marriage Of: Lola Westbrook Benefield No. 128,733
and Keith William Benefield

Special Master's Report

This day this cause having come on for hearing on Motion to Set Aside Order dated September 18, 1991, and filed in the above styled and numbered cause.

This matter was assigned to Charles A. Brewer, Special Master for hearing and the hearing was held on October 24, 1991, with the following parties present: Charles Robb, attorney at law, P. O. Box 1044, Vicksburg, Mississippi, representing Lola Westbrook Benefield; Michael Malouf, attorney at law, 106 South President Street, Jackson, Mississippi, representing Keith William Benefield; Kerry Prisock, 801

East Fortification Street, Jackson, Mississippi, who was the former attorney for Keith William Benefield; Rhonda Cobb, secretary to Kerry Prisock.

Special Master finds that a Motion for Contempt filed by Lola Westbrook Benefield was originally set for hearing on November 5, 1990, before the Honorable Patricia Wise, but for various reasons and certain conflicts was continued until January, 1991. The hearing was begun on that date but recessed by Chancery Judge Patricia Wise due to lack of time to hear all the evidence. The motion was reset for hearing on Mach 15,1 991, but Kerry Prisock had a conflict and was unable to agree with opposing counsel, Charles Robb, for another setting at that time. Kerry Prisock filed a Motion for Continuance dated March 5, 1991, and marked "filed" in this Court on March 11, 1991. This Motion was never set for hearing and Kerry Prisock testified along with his secretary that they believed the continuance had been granted although an Order was never received. Mr. Charles Robb, representing the Movant, stated that he had never agreed to a continuance and had never received any Order of Continuance or setting on the Motion. Mr. Prisock had a prior engagement outside the State of Mississippi involving a case wherein he was representing the Plaintiff in a malpractice action and was attending a conference where his expert was speaking. He left the State of Mississippi on or about March 6, 1991. Mr. Prisock's secretary stated that she called Judge Wise's office on several occasions in an attempt to locate the Order that had been sent previously. No one from Judge Wise's office was called to testify as to whether or not they had given any advice about the continuance to either Mr. Prisock or his secretary.

On the date of the trial, March 15, 1991, after notice had been sent to all parties, Mr. Robb appeared and presented his case to the Court. Mr. Robb advised the Court at that time that a Motion had been filed for a continuance but no Order had been received. The Court saw fit at

that time to give Mr. Robb's client the relief sought for in his Motion for Civil Contempt of Court, which was $10,000.00 to purge himself from said contempt and a total judgment of $58,900.17. An Order was entered to this effect on April 3, 1991 and signed by Judge Wise. Subsequent negotiations continued between Mr. Robb and Mr. Prisock regarding this case after the date of the signing of the Order. Testimony from Mr. Prisock and his secretary was that no copy of the Order had ever been sent to him or his client. Mr. Prisock testified that he was acting and negotiating the case as if an Order had never been entered. Mr. Prisock entered into an agreement for a deposition of his client with Mr. Robb for sometime in August, 1991. At the deposition hearing, which took place at the office of Charles Robb, two deputy sheriff's came in and presented the Order from the hearing of March 15, 1991, which was dated April 1, 1991, to Keith William Benefield and then placed him in custody. It was approximately a week before Mr. Benefield's parents were able to come up with the money to purge him of this contempt by payment of $10,000.00. Mr. Prisock testified that this was the first time he had notice of an Order being entered against his client. Subsequent to the arrest of Keith William Benefield, Kerry Prisock was relieved of his representation of Mr. Benefield and Michael J. Malouf entered an Order substituting him as counsel.

Special Master finds that Rule 60 of the Mississippi Rules of Civil Procedure states that on Motion and upon such terms as are just, the Court may relieve a party of his legal representative from a final judgment, order or proceeding for certain. The rules set forth six (6) reasons which may be used to set aside such order and certain other requirements. The Special Master finds that a motion in accordance with this rule was filed within said prescribed time and this motion does adequately fall within Rule 60, entitling the movant the relief requested.

Rule 5.04 of the Uniform Chancery Court Rules requires that in litigated actions the attorney who shall be directed to draw the judgment,

shall submit the same to opposing counsel for criticism as to form only and shall present the same to Chancellor within ten (10) calendar days after being directed to draw the judgment unless otherwise permitted. Special Master finds that this was not done, and although the requirements states for form only, the defendant would have had notice of this order if this rule had been followed. Special Master further finds that there is no excuse for Kerry Prisock (1) relying totally on his secretary to prepare a motion and secure an Order for a continuance. Mr. Prisock had knowledge that Mr. Robb was not agreeable to the Motion and for that reason alone should have been more diligent in seeking an Order or at least having obtained a setting of this Motion prior to leaving town for any reason.

Special Master recommends that the Order of Civil Contempt dated April 3, 1991, which was heard on March 15, 1991, be set aside. That all monies recovered based upon said Order of Civil Contempt be held in abeyance and not recovered by Keith William Benefield until a hearing on the merits is held and an Order is entered determining what monies if any are owed by Keith William Benefield to Lola Westbrook Benefield.

Respectfully submitted,
S/S CHARLES A. BREWER
SPECIAL MASTER

[Certificate of Service dated October 29, 1991.]

The Constitution of the United States of America:

Fifth Amendment,

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or

limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment,

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Mississippi Rules of Appellate Procedure

Rule 10. Content Of The Record Of Appeal

(f) Limit on Authority to Add to or Subtract From the Record. .Nothing in this rule shall be construed as empowering the parties or any court to add to or subtract from the record except insofar as may be necessary to convey a fair, accurate, and complete account of what transpired in the trial court with respect to those issues that are the bas[i]s of appeal.

Rule 40. Motion For Rehearing. (a) Time for filing . . . .A motion for rehearing may be filed within 14 days after a decision is handed down on the merits of a case by the Supreme Court. . . Within seven days after the filing of a motion for rehearing, any other party, may, but need not, file and serve a written response in opposition to the Motion . . . Failure to file a response within this time period waives the right to respond but does not confess the argues made in the motion. . . . After a motion fore rehearing has been granted or denied, no further motion for rehearing shall be filed by any party.

Uniform Chancery Court Rule

Rule 5.04 Judgment Must Be Submitted To Opposing Counsel And Chancellor--When - In all litigated actions, the attorney who shall be directed to draw the Judgment shall submit the same to opposing counsel for criticism as to form only, and shall present the same to the Chancellor within ten (10) calendar days after being directed to draw the judgment unless otherwise permitted. "

Mississippi Rules of Professional Conduct

Rule 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not: . . . (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists; . . . .

Rule 4.1 Truthfulness In Statements To Others

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; . . .

Rule 4.4 Respect For Rights Of Third Persons

In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to: (a) violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another; . . (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (d) engage in conduct that is prejudicial to the administration of justice

. . . .

Rules of Discipline For The Mississippi Bar

Rule 1. Jurisdiction.

(a) The Supreme Court of Mississippi (the Court) has exclusive and inherent jurisdiction of matters pertaining to attorney discipline, reinstatement, and appointment of receivers for suspended and disbarred attorneys, and hereafter such proceedings shall be conducted in accordance with these rules. The court shall be the ultimate judge of matters arising under these rules, and from time to time the Court shall review these rules and amend them when necessary or desirable. . . .

Rule 3. Disciplinary Agencies Designated.

For purposes of administering the Court's disciplinary jurisdiction, the following entities are hereby established and designated as agencies of the Court. (a) The Board of Commissioners of the Bar. (b) The Executive Director of the Bar and Complaint Counsel. . . .

Procedure . . . (3.2) The agencies shall be composed of active practicing attorneys or judges of the Circuit, Chancery or County Courts who are members of the Bar of this State and shall further be constituted as follows: (a) Board of Commissioners. The Board of Commissioners of the Bar is provided for by Section 73-3-107, Mississippi Code of 1972. . . . The Board shall have the authority to employ and compensate competent persons to serve as Complaint Counsel, Assistant Complaint Counsels and non-lawyer staff who shall serve at the pleasure of the Board . . . either in full-time or part-time capacity, as the Board may from time to time deem necessary or advisable to effect the disciplinary procedures set forth herein. . . . (c) Panels. The Court shall appoint a panel of judges and attorneys from each Supreme Court District, and from those panels Complaint Tribunals shall be designated and constituted as the need arises. . . . (d) Complaints Tribunal. All tribunal members shall be selected from the panels mentioned above. . . .

Rule 8. Complaint Tribunal - Powers And Duties

(a) All formal complaints shall be filed with the Clerk of the court and the Court shall designate a Complaint Tribunal to hear the matter. Hearings before Complaint Tribunals shall be as cases in chancery.

Rule 9. Appeals.

(a) Either the Bar or the accused attorney may, as a matter of right, appeal any final disposition of the Tribunal to the Court. (b) Where the Tribunal's final disposition is made upon a nolo contendere plea, an admission or an irrevocable resignation, the extent or absence of discipline shall be the sole question presented by an appeal.

Procedure (9.1) Who May Take an Appeal. Either the Board or the attorney may appeal a final disposition of the Tribunal. The Board of Commissioners of the Bar shall determine whether General Counsel shall take an appeal on behalf of the Bar. The Board of Bar Commissioners may direct General Counsel to perfect an appeal when the Board believes that the Tribunal's findings and decisions are arbitrary and capricious, not supported by substantial evidence, manifestly wrong, or in error as to a matter of law. . . . (9.4) Extent of Appellate Review. Upon appeal, the Court shall review the entire record and the findings and conclusions of the Tribunal, and shall render such orders as the Court may find appropriate. In so ruling, the Court shall not be bound by the rule applicable to administrative agencies to the effect that their orders must be affirmed, unless they are arbitrary and capricious and are not supported by substantial evidence, or the rule that, as in chancery, the chancellor will not be reversed on the facts unless he is manifestly wrong. Upon the conclusion of any appeal, the Court shall award costs and expenses as in its discretion appears appropriate.

Mississippi Code of 1972, as amended

Sec.. 73-3-107. Governing board. The bar shall be controlled and governed by a Board of Commissioners consisting of as many members as shall be established by

the bylaws of the bar or any amendments thereto, adopted at an annual meeting of the bar.

Sec. 73-3-111. Secretary; election; term of office; duties. A secretary, who may be designated as executive director, shall be elected by the Board of Commissioners and shall hold office for one (1) year. . . . The secretary shall keep minutes of all meetings of the Board of Commissioners and such minutes, signed by the chairman and secretary, shall be the evidence of the proceedings had and actions taken by the board. . . . .

ABA, MODEL RULES FOR LAWYER DISCIPLINARY ENFORCEMENT

II. PROCEDURE FOR DISCIPLINARY PROCEEDINGS. . . .

Rule 11. Generally. . .

F. Review by the Court. (2) During its review, the court shall not receive or consider any evidence that was not presented to the hearing committee, except upon notice to the respondent and disciplinary counsel and opportunity to respond.

In The Supreme Court Of the State of Mississippi

The Mississippi Bar — Appellant/Cross-Appellee

vs — **Cause No. 93-BA-1051**

R. Charles Robb — Appellee/Cross-Appellant

Appellee/Cross-Appellant's Motion For Leave To Respond To, Comment Upon Or To Cite Authorities In Response To The Court's Supplement To The Record

Comes Appellee/Cross-Appellant, Charles Robb, and moves this Court for leave to respond, comment upon or to cite authorities in response to the **Court's Supplement To The Record**. In support hereof, Mr. Robb would show as follows:

-1-

During oral argument before this Honorable Court, the Court in its inquiry as to whether Mr. Benefield had been harmed also inquired as to

whether any harm may have occurred to his former wife, Ms. Westbrook. The matter of Mr. Robb suing her was presented, which raised a question of whether she was damaged or her case against her former husband had been compromised by Mr. Robb's actions. This Court on its own inquiry requested a certified copy of the lower court's file. Mr. Robb voluntarily provided to the Court and The Mississippi Bar a copy thereof.

-2-

The Mississippi Bar did not raise the issue of any harm to Westbrook before the Complaint Tribunal nor did it brief such before this Court nor did it attempt to supplement the record before oral argument herein. In its **Reply Brief\Brief** (p.26) The Mississippi Bar implies that such action of Mr. Robb suing Ms Westbrook is proof that "there has been no mitigating information or evidence presented on Robb's behalf."

-3-

The controlling procedure for supplementation of the record is set forth in Rules 10(f) and 28(j)&(l) of the **Mississippi Rules of Appellate Procedure**. The Rules do not provide for supplementation of evidence into record where the evidence is not "necessary to convey a fair, accurate, and complete account of what transpired in the trial court with respect to those issues that are the bases of appeal." (R.10(f)) Rule 9.4 of the **Mississippi Rules of Discipline** and voluminous case law concerning disciplinary actions provides that this Court reviews the entire record and the findings and conclusions of the Tribunal de novo, not tries the case de novo.

-4-

As a matter of fundamental fairness, this Court should allow Mr. Robb to comment upon, reply to or to cite authorities in response to the matters set forth in the **Court's Supplement To The Record**. Mr. Robb would be able to present such mitigating information with regard to the parties involved in said **Supplement**.

Respectfully submitted,
R. Charles Robb
Appellee/Cross-Appellant

In The Supreme Court Of the State of Mississippi

The Mississippi Bar — Appellant/Cross-Appellee
vs — **Cause No. 93-BA-1051**
R. Charles Robb — Appellee/Cross-Appellant

Motion To Stay Order Of Suspension And The Issuance Of A Mandate Pending A Decision On Petition For Rehearing

R. Charles Robb, Appellee/Cross-Appellant, moves this Court for entry of an **Order** staying the **Order of Suspension** and staying the issuance of a **Mandate** on the **Order of Suspension** and in support hereof would show as follows:

-1-

This Court entered an **Order of Suspension** on June 20, 1996, to be effective eleven (11) days later, July 1, 1996. However, Rule 40 (a) of the **Rules** of this Court allows fourteen (14) days for the filing of a **Petition for Rehearing** after a decision is handed down on the merits. This application for a stay is submitted upon an emergency basis where the **Order of Suspension** would become effective within a shorter time than allowed for filing a **Petition for Rehearing** (14 days) and for the issuance of a **Mandate** (21 days).

-2-

Rule 11(a) of the **Rules Of Discipline For The Mississippi State Bar** provides that an appeal operates as a supersedeas of the case, except in matters concerning Rule 6 or 10 thereof. This case does not concern either Rule 6 or 10 of the **Rules of Discipline**.

-3-

In addition to this Court's inherent power to grant a stay, Rule 8(c) of the **Rules** of this Court likewise provides for the granting of a stay pending appeal.

-4-

The stay is requested for the following reasons:

I. The **Decision** rendered herein on June 20, 1996, states facts concerning rights of third parties and damages to Ms. Westbrook, Robb's former client. The facts stated in the **Decision** are incorrect. The judicial purpose of findings of fact is to support the Court's conclusions of law and the discipline imposed. The incorrect facts lead to erroneous conclusions of law in support of enhanced discipline and Robb should be allowed to file a **Petition For Rehearing** seeking this Court's reconsideration thereof.

II. The **Decision** rendered herein on June 20, 1996, relies upon evidence not before the Tribunal and admitted for consideration by this Court outside the **Mississippi Rules of Appellate Procedure**, the **Rules Of Discipline**, and the case law concerning supplementation of the record. The supplementation of evidence into the record outside the established rules and case law has lead to an enhanced discipline and to which Robb should be allowed to file a **Petition For Rehearing** seeking this Court's reconsideration thereof.

III. The **Decision** rendered herein on June 20, 1996, does not address the constitutional issues raised by merger of general violations into specific violations in determining the conduct forming the basis of the charges against Robb and the discipline warranted for such charges. Robb should be allowed to file a **Petition For Rehearing** seeking this Court's reconsideration thereof. . . .

V. Robb should have an opportunity to present to this Court the correct facts and the law upon such correct facts so that this Court may reduce the length of the discipline or to sustain the decision of the

Complaint Tribunal. The stay is necessary to prevent a discipline which this Court may find is not otherwise warranted.

I.

Incorrect Facts

-5-

At page 8 of the second complete paragraph of this Court's **Decision**, the facts stated are:

"Robb's client, Westbrook, ultimately lost her claim for back payments owed in the amount of $58,990.17 and future obligations owed to her of $135,000.00, as a result of the lower court's finding that Robb's efforts to execute on the contempt order were improper."

-6-

There is no evidence of record that Westbrook's cause of action against her former husband was "lost" or that its value was in anyway diminished "as a result of the lower court's finding that Robb's efforts to execute on the contempt order were improper". A certified copy of the lower court's order concluding the contempt action is attached hereto.

-7-

Westbrook's cause of action against her former husband was not in dispute, and the facts concerning same were not disputed by The Mississippi Bar, Appellant/Cross-Appellee. . . .

-10-

There is no evidence of record that Westbrook would not have been entitled to a **Judgment of Contempt** in the chancery court for the amount accrued on the **Judgment for Divorce** or for future payments, but for the entry of the **Agreed Judgment** . . . .

-11-

. . .there should be no finding that any action or in action by Robb effected Westbrook's ability or right to pursue her claim against her former husband for the sums due in the **Judgment of Divorce**.

-12-

In his **Petition For Rehearing**, Robb will respectfully request this Court to correct the facts to show that his suit filed against Westbrook did not result in any harm to her and that there being no proof to show harm to Westbrook, there was no resulting violation of the **Mississippi Rules of Professional Conduct** because of said suit. Further, Robb will request that this Court reduce the period of suspension in the **Order of Suspension** to a term consistent with this Court's past decisions concerning conduct forming the basis of the charges against Robb.

II.

Evidence Admitted By This Court Outside Established Rules And Case Law

-13-

During oral argument before this Honorable Court, the Court in its inquiry as to whether Mr. Benefield had been harmed also inquired as to whether any harm may have occurred to his former wife, Ms. Westbrook. The matter of Mr. Robb suing her was presented, which raised a question of whether she was damaged or her case against her former husband had been compromised by Mr. Robb's actions. This Court on its own inquiry requested a certified copy of the lower court's file. Mr. Robb voluntarily provided to the Court and The Mississippi Bar a copy thereof.

-14-

The Mississippi Bar did not raise the issue of any harm to Westbrook before the Complaint Tribunal nor did it brief such before this Court nor did it attempt to supplement the record before oral argument herein. In its **Reply Brief\Brief** (p.26) The Mississippi Bar implied that such action of Mr. Robb suing Ms Westbrook is proof that "there has been no mitigating information or evidence presented on Robb's behalf."

-15-

This Court included in its findings details gained from the Court's requested supplementation of evidence, thereby appearing to adopt The Mississippi Bar's implication that Robb's suit is further evidence of egregious conduct. Said suit was after Benefield's arrest. This Court in its **Conclusion** states that Robb's "acts following the arrest of Benefield [Robb's emphasis] bring disfavor upon the legal profession and must be considered in imposing sanctions".

-16-

This Court requested supplementation of evidence into the record outside the **Mississippi Rules of Appellate Procedure** and the **Rules of Discipline**. This Court denied Robb an opportunity for leave of respond to, comment upon or to cite authorities in mitigation of the evidence of the supplemented. This Court now makes findings of fact and a conclusion against Robb without allowing him an opportunity to defend against the supplemented evidence.

-17-

In his **Petition For Rehearing** Robb will respectfully request this Court to alter its finding to delete reference to Robb's suit against Benefield and to reinstate the **Order** of the Tribunal or to reduce the period of suspension in the **Order of Suspension** to a term consistent with this Court's past decisions concerning conduct forming the basis of the charges against Robb.

III.

Merger Of General Violations Into Specific Violations

-18-

Robb presented to this Court the issue that Rule 8.2(a) and (d) of the **Mississippi Rules of Professional Conduct** merged into the specific violations and that the charges of violation of the general rules are duplicitous to the specific rules and may not be used to enhance the discipline.

-19-

This Court did not address the issue of merger, the enhancement of punishment, and the substantive due process rights in this quasi-criminal proceeding.

-20-

The actions charged to be in violation of the **Mississippi Rules of Professional Conduct** are specific to fit within specific rules of conduct. Specificity is the nature from which attorney discipline is decided and establishes guidelines for future actions of attorneys. A direct address by this Court of the issue of merger is important for the bar as a whole and for a determination of reduction in discipline in this case.

-21-

In his **Petition For Rehearing** Robb will respectfully request this Court to address the issue of merger in his favor and that will show that a reduction of the general charges by merger into the specific charges should reinstate the **Order** of the Tribunal or reduce the period of suspension in the **Order of Suspension** to a term consistent with this Court's past decisions concerning conduct forming the basis of the specific charges against Robb.

IV.

Discipline Imposed Is Not Consistent With Prior Decisions

. . . .

-23-

The attorney discipline in this Court's **Decision** is not consistent with the past decisions of this Court in **Mississippi Bar v. Smith,** 577 So.2d 1249 (Miss.1991), **Foote v. Mississippi State Bar Ass'n,** 517 So.2d 561 [Count 2] (Miss.1987), and **Pitts v. Mississippi State Bar Ass'n,** 462 So.2d 340 (Miss.1985) with regard to similar conduct forming the basis of the charges against Robb.

V.

Stay Prevents An Unwarranted Discipline

-25-

In the event that Robb prevails upon this Court to either correct the facts upon which the discipline is based, or to strike or withdraw the supplementation of evidence into the record and upon which the discipline is based or to merge the general violations into the specific violations in determining the conduct forming the basis of the charges and upon which the discipline is based, or find that the conduct forming the basis of the charges against Robb and the discipline imposed is more consistent with past decisions of this Court other than that of **Mathis, supra.**, the discipline should be reduced or the decision of the Complaint Tribunal shou!d be reinstated.

-26-

If the stay is not granted and discipline is effective July 1, 1996, any discipline imposed upon future findings and decision of this Court on a **Petition For Rehearing** could be inconsistent with such decision and unwarranted. The stay is necessary to prevent a discipline which this Court may find is not otherwise warranted.

Respectfully submitted,
R. Charles Robb,
Pro Se

In The Supreme Court Of the State of Mississippi

The Mississippi Bar — Appellant/Cross-Appellee

vs — **Cause No. 93-BA-1051**

R. Charles Robb — Appellee/Cross-Appellant

Appeal from the Decision Of A Complaint Tribunal

Motion For Rehearing

R. Charles Robb, Appellee/Cross-Appellant, (hereinafter "Robb") moves this Court for rehearing of the **Decision** of the majority opinion of the Court rendered June 20, 1996, in the above case. Robb respectfully contends that the majority has overlooked or misapprehended

certain points of law and fact which support rehearing and reconsideration of their opinion.

STATEMENT OF THE ISSUES FOR REHEARING

I. The appeal taken by General Counsel for the Mississippi Bar was without authority of the Board of Commissioners of the Bar and should be dismissed for lack of jurisdiction by this Court.

II. The **Decision** states facts concerning rights of third parties and damages to Ms. Westbrook, Robb's former client. The facts stated in the **Decision** are incorrect. The incorrect facts should be deleted from the **Decision**, and this Court should sustain the **Opinion** and **Judgment** of the Complaint Tribunal or reduce the length of the discipline.

III. The **Decision** relies upon evidence not before the Tribunal but admitted for the first time for consideration by this Court outside the **Mississippi Rules of Appellate Procedure**, the **Rules Of Discipline**, and the case law concerning supplementation of the record. This Court's reliance upon the supplemented evidence has led to an enhanced discipline. This Court should strike the supplemented evidence from the record, delete the facts relevant thereto, and sustain the **Opinion** and **Judgment** of the Complaint Tribunal or reduce the length of the discipline. . . .

ARGUMENT

Lack Of Jurisdiction

Pursuant to Rule 7(b)(iii) of the **Rules of Discipline of the Mississippi State Bar ("Rules of Discipline")**, a **Formal Complaint** was filed herein on August 19, 1992. Paragraph 2 of the **Formal Complaint** established General Counsel's authority therefor and included Exhibit "1" (R.8) in support thereof. As noted at the bottom of said Exhibit, the attorney and the complaining party were copied with same.

Rule 9(a) of said disciplinary rules grants the Mississippi Bar an appeal as a matter of right. Procedural Rule 9.1 of the **Rules of Discipline** reads in part:

"The Board of Commissioners of the Bar shall determine whether General Counsel shall take an appeal on behalf of the Bar. The Board of Bar Commissioners may direct General Counsel to perfect an appeal when the Board believes that the Tribunal's findings and decisions are arbitrary and capricious, not supported by substantial evidence, manifestly wrong, or in error as to a matter of law."

There is no evidence in the record nor has General Counsel asserted authority from the Board of Commissioners of the Bar that after review of the Tribunal's findings and decision that the Board of Commissioners of the Bar believed that the Tribunal's findings and decision are arbitrary and capricious, not supported by substantial evidence, manifestly wrong, or in error as to a matter of law and that General Counsel shall take an appeal on behalf of the Bar.

General Counsel nor the Board of Commissioners of the Bar provided Robb a copy of any such authority as it did in the filing of the **Formal Complaint**.

General Counsel serves at the behest of the Board of Commissioner of the Bar. The **Rules of Discipline** control General Counsel's authority to file the appeal on behalf of the Board of Commissioners of the Bar. This Court instituted the **Rules of Discipline** and "matters pertaining to attorney discipline . . . and such proceedings shall be conducted in accordance with these rules" (Rule 1). Said **Rules** grant the Complaint Tribunal administration of the Court's disciplinary jurisdiction. (Rules 3 & 8) Further, this Court limits an appeal by the Mississippi Bar to the conditions that the Board of Commissioners of the Bar, not General Counsel, consider the Complaint Tribunal's findings and decisions to be either arbitrary and capricious, or not supported by substantial evidence, or manifestly wrong, or in error as to a matter of law and that it

direct General Counsel to take an appeal after finding error in the Complaint Tribunal's findings and decision.

The appeal by the Mississippi Bar has been taken without the jurisdictional authority granted it by Procedural Rule 9.1 of the **Rules of Discipline of the Mississippi State Bar** and should be dismissed.

The appeal of R. Charles Robb has been denied. The **Opinion** and **Judgment** of the Complaint Tribunal should be reinstated. The **Decision** and **Order of Suspension** of this Court should be reversed.

Incorrect Facts

At page 8 of the second complete paragraph of this Court's **Decision**, the facts stated are:

"Robb's client, Westbrook, ultimately lost her claim for back payments owed in the amount of $58,990.17 and future obligations owed to her of $135,000.00, as a result of the lower court's finding that Robb's efforts to execute on the contempt order were improper."

There is no evidence in the record before this Court to the effect that Westbrook's cause of action against her former husband was "lost" or that its value was in any way diminished "as a result of the lower court's finding that Robb's efforts to execute on the contempt order were improper". A certified copy of the lower court's order concluding the contempt action is attached hereto.

Westbrook's cause of action against her former husband was not in dispute, and the facts concerning same were not disputed by The Mississippi Bar, Appellant/Cross-Appellee. There is no evidence of record that Westbrook would not have been entitled to a **Judgment of Contempt** in the chancery court for the amount accrued on the **Judgment for Divorce** or for future payments, but for the entry of the **Agreed Judgment** . . . . This Court's erroneous findings of fact that Robb's actions concerning Benefield's arrest caused Westbrook to lose her contempt action claim against Benefield is the equivalent of taking judicial notice of a fact or the employment of an incorrect legal standard.

Judicial fairness and due process require that the trial court must afford notice to the parties who will be affected by the taking of such judicial notice. **Varnell v. Green**, 512 So. 2d 903, 904 (Miss. 1987); **Eidt v. City of Natchez**, 421 So. 2d 1225, 1231 (Miss. 1982). **See Federal Rule of Evidence** 201(e); **Mississippi Rule of Evidence** 201(e). . . .

"Fact-findings made under an erroneous legal standard are not protected by [this Court's] substantial evidence clearly erroneous standard of review." **Balfour v. State**, 580 So. 2d 1203, 1209 (Miss. 1991), citing **Leatherwood v. State**, 539 So. 2d 1378, 1381 (Miss. 1989); **McClendon v. State**, 529 So. 2d 1375, 1377 (Miss. 1989)

Where there are no facts to support a conclusion of law, this Court should broadly review the record on this **Motion for Rehearing** to determine whether it has used an incorrect legal standard as to the evidence relied upon in making such findings of fact.

If this Court takes judicial notice of facts or evidence not in the record, it should, in judicial fairness and by the principal of due process, afford Robb an opportunity to respond to or comment upon such facts or evidence when they affect the type and length of discipline. . . .

It is axiomatic that the judicial purpose of findings of fact is to support the Court's conclusions of law and the discipline imposed. The incorrect facts have led to erroneous conclusions of law in support of enhanced discipline. . . .

This Court should set aside the findings that

"Robb's client, Westbrook, ultimately lost her claim for back payments owed in the amount of $58,990.17 and future obligations owed to her of $135,000.00, as a result of the lower court's finding that Robb's efforts to execute on the contempt order were improper." . . .

Evidence Admitted By This Court Outside
Established Rules And Case Law

During oral argument before this Honorable Court, the Court in its inquiry as to whether Mr. Benefield had been harmed, also inquired as

to whether any harm may have occurred to his former wife, Ms. Westbrook. The matter of Mr. Robb suing Westbrook was presented, which raised a question of whether she was damaged or her case against her former husband had been compromised by Mr. Robb's actions. This Court, on its own inquiry or motion, requested a certified copy of the lower court's file. Mr. Robb voluntarily provided to the Court and The Mississippi Bar a copy thereof.

The Mississippi Bar did not raise the issue of any harm to Westbrook before the Complaint Tribunal, and it did not brief that issue before this Court or attempt to supplement the record before oral argument herein. In its **Reply Brief\Brief** (p.26) The Mississippi Bar implied that such action of Robb suing Westbrook is proof that "there has been no mitigating information or evidence presented on Robb's behalf."

The controlling procedure for supplementation of the record is set forth in Rules 10(f) and 28(j)&(l) of the **Mississippi Rules of Appellate Procedure**. The Rules do not provide for supplementation of evidence into record where the evidence is not "necessary to convey a fair, accurate, and complete account of what transpired in the trial court with respect to those issues that are the bases of appeal." (R.10(f)) Procedural Rule 9.4 of the **Rules of Discipline** and the voluminous case law concerning disciplinary actions provide that this Court review the entire record and the findings and conclusions of the Tribunal de novo, not try the case de novo. . . .

This Court requested supplementation of evidence into the record outside the **Mississippi Rules of Appellate Procedure** and the **Rules of Discipline**. This Court denied Robb's **Motion For Leave To Respond To, Comment Upon Or To Cite Authorities In Response To The Court's Supplement To The Record** thereby denying him an opportunity to respond to, comment upon or to cite authorities in mitigation of the evidence of the supplemented. This Court now makes findings of

fact and a conclusion against Robb based upon the Court's supplementation of evidence in the record without allowing Robb an opportunity to defend against the supplemented evidence.

Robb's suit against Westbrook did not result in any harm to her. There being no proof of harm to Westbrook, there was no resulting violation of the **Mississippi Rules of Professional Conduct** because of said suit.

Robb respectfully requests this Court to set aside its findings as they relate to the details of Robb's suit against Westbrook and to reinstate the **Order** and **Judgment** of the Tribunal or to reduce the period of suspension in the **Order of Suspension** to a term consistent with this Court's past decisions concerning conduct forming the basis of the charges against Robb.

Discipline Imposed Is Not Consistent With Prior Decisions

. . . .

Respectfully submitted,
R. Charles Robb, Pro Se

(3)

Supreme Court, U.S.
FILED
FEB 6 1997
CLERK

No. 96101072

In The

Supreme Court

of the United States

October Term 1996

CHARLES ROBB,

Petitioner,

v.

THE MISSISSIPPI BAR,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Mississippi.

BRIEF OF RESPONDENT IN OPPOSITION TO A PETITION FOR WRIT OF CERTIORARI

MICHAEL B. MARTZ
Counsel of Record
General Counsel
The Mississippi Bar
643 North State Street
Post Office Box 2168
Jackson, Mississippi 39225-2168
(601) 948-4471
Attorney for the Respondent

APPELLATE SERVICE: CURRY & TAYLOR (800) 222-8738

QUESTIONS PRESENTED

1. Whether the governing body of The Mississippi Bar, the Board of Bar Commissioners, in a state governed disciplinary proceeding can direct its General Counsel to file for an appeal of a decision of a Mississippi Supreme Court appointed Complaint Tribunal without attaching a copy of its directive to said General Counsel?

2. Can the United States Supreme Court overrule a Mississippi Supreme Court rule that the Mississippi Supreme Court has exclusive and inherent jurisdiction over attorney disciplinary matters which includes a right to review attorney disciplinary matters "de novo" when they come before the Mississippi Supreme Court?

PARTIES BELOW

The Mississippi Bar

R. Charles Robb

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RESPONSE TO PETITION FOR WRIT OF CERTIORARI

Petitioner, R. Charles Robb, prays that a Writ of Certiorari be issued to review the Judgment of the Supreme Court of Mississippi in this matter but he has not presented persuasive reasons why certiorari should be granted.

OPINION BELOW

The ruling of the Mississippi Supreme Court from which the Petitioner seeks certiorari is included in the case styled *The Mississippi Bar v. R. Charles Robb,* (App., infra, 1a-17a) dated June 20, 1996. The Petitioner's Motion for Rehearing was denied by the Mississippi

Supreme Court on September 19, 1996 (App., infra, 27a, 28a).

In its decision, the Mississippi Supreme Court reversed the public reprimand imposed upon the Petitioner by a Mississippi Supreme Court appointed Complaint Tribunal. However in its decision, the Mississippi Supreme Court concluded its ruling with the following paragraph:

> Before the Complaint Tribunal and this Court, Robb has sought at every point to blame others for his acts of deceit. His failure to furnish obvious information to counsel opposite and his deceit in arranging for the arrest of Benefield merits a suspension from the practice of law. Further, his acts following the arrest of Benefield bring disfavor upon the legal

> profession and must be considered in imposing sanctions. Finally, his demeanor and attitude before this Court and his apparent disregard for the rights of others, substantiate this Court's opinion that Robb should be suspended from the practice of law. Therefore, we hereby find that R. Charles Robb should be suspended from the practice of law for a period of six (6) months.

SUMMARY OF THE ARGUMENT

The Petitioner herein submits that he has been denied due process of law by stating that the Mississippi Supreme Court entered the Order suspending him without "the requisite subject matter jurisdiction" to hear and

consider the Mississippi Bar's "appeal" of the Complaint Tribunal's decision to only publicly reprimand him for his acts of deceit. Petitioner further submits that he was denied certain procedural due process rights afforded him by the Fifth and Fourteenth Amendments of the Constitution of the United States of America.

Petitioner also submits that this Court's jurisdiction is invoked under 28 U.S.C. §1257 (a) and 2101 (c) and his Petition is submitted for consideration pursuant to Rules 10.1 (b) and 10.1 (c), Rules of the United States Supreme Court. In response, the Mississippi Bar submits the Petitioner has failed to satisfy such jurisdictional requirements.

United States Supreme Court Rule 10 sets forth the grounds which must be established in

order for a Petition for Writ of Certiorari to be granted:

> A review on writ of certiorari is not a matter of right, but of judicial discretion. A Petition for Writ of Certiorari will be granted only when there are special and important reasons therefore.

In the case sub judice there simply does not exist any "special and important reason" to grant Petitioner's request for a writ. Instead, this action arises out of an routine attorney disciplinary case. Historically, attorney disciplinary proceedings have been left largely to the states. Therefore, in order for the Court to invade the province of each state to exercise its inherent and exclusive jurisdiction over attorney

disciplinary matters, a fundamental freedom must exist. [1] Otherwise each state is free to develop its own system of attorney regulation. As such, this case does not present any state or federal constitutional or statutory question nor does it present any question upon which there is a conflict in the court of appeals or the district courts. In addition, this case does not present an important issue of federal law nor does it present a conflict between a decision of the court of appeals and the Mississippi Supreme Court regarding a general non-federal matter.

To justify a grant of certiorari, the special and important requirement must be more than "academic" or "episodic". The issues must reach constitutional dimensions. *Rice v. Sioux*

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[1] For example, freedom of speech. See *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977).

City Memorial Park Cemetery, 349 U.S. 70 (1955). This Court does not sit to satisfy a scholarly interest. . . nor does it sit for the benefit of the particular litigant". *Rice*, 349 U.S. at 4 (citing *Mangum Import v. Cody*, 262 U.S. 159, 163 (1923). As the Court *in Layne and Bowler Corporation v. Western Well Works, Inc.*, 261 U.S. 387 (1923) stated:

"It is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties and in cases where there is a real and embracing conflict of opinion and authority between the circuit courts of appeal". *Layne and Bowler Corporation*, 261 U.S. at 393.

Therefore, the instant Petition does not deserve to be sustained.

STATEMENT OF THE CASE

The Petitioner submits that the Mississippi Supreme Court denied him due process in a de novo proceeding when it did not require the Mississippi Bar to produce a copy of its minutes or other evidence that the Bar authorized its General Counsel to pursue an appeal to the Mississippi Supreme Court of the Public Reprimand imposed upon Mr. Robb by the Mississippi Supreme Court appointed Complaint Tribunal which was based upon Mr. Robb's deceitful conduct. In addition, the Petitioner alleges that the Mississippi Supreme Court

further denied him due process when it considered the actions he took, in aggravation of the discipline to be imposed upon him, after he committed his deceitful conduct. Both arguments were presented to the Mississippi Supreme Court by the Petitioner in his Motion for Rehearing which were summarily dismissed by the Mississippi Supreme Court.

REASONS FOR NOT GRANTING THE PETITON FOR WRIT OF CERTIORARI

RESPONSE TO PROPOSITION

I.

THE MISSISSIPPI SUPREME COURT HAS INHERENT AND EXCLUSIVE JURISDICTION OVER ATTORNEY DISCIPLINARY MATTERS.

In the Motion for Rehearing that the Petitioner filed with the Mississippi Supreme Court, the Petitioner admitted that he raised for the first time the issue that the Mississippi Supreme Court did not have jurisdiction to hear his disciplinary case, de novo, because the "brief of the (Mississippi) Bar did not state that a decision" to appeal the Tribunal's findings and decision had been made by the Bar's governing board. Mr. Robb further submits that the Bar did (not) attach to its Notice of Appeal the minutes of the Board meeting whereat the matter was discussed.

In support of the Petitioner's position, he makes four arguments. First, Rule 9, Mississippi Rules of Discipline, requires the Bar's governing body "to determine whether

General Counsel shall take an appeal on behalf of the Bar".

Second, the Bar failed to file a timely response to his Motion for Rehearing before the Mississippi Supreme Court.

Third, the Mississippi Supreme Court failed to comply with the requirements of *In the Matter of Thalheim*, 853 F.2d 383 (CA 5 1988), which requires the disciplinary authority involved to strictly adhere to its own rules.

Fourth, the Mississippi Supreme Court failed to comply with the requirements of *The Mississippi Bar v. Attorney G*, 630 So.2d 344, (Miss. 1994), which requires the Mississippi Bar to produce a certified copy of the Judgment of Conviction for summary disposition when the rule of procedure requires the production of

such certified copy of Judgment of Conviction to prove that a lawyer has been adjudged guilty of a criminal offense.

The Mississippi Bar will respond to the points of law raised by the Petitioner in the order he presented them.

First, the Petitioner did not and cannot cite to this Court any Mississippi Rule of Discipline which requires the Bar to present to the Mississippi Supreme Court any evidence, including a copy of the Board's minutes, that the Bar's governing body authorized and directed the Bar's General Counsel to appeal the Tribunal's imposition of a Public Reprimand upon the Petitioner for his deceitful conduct. The Rule Petitioner cites in his Petition for Writ of Certiorari as support for his position, Rule 9

of the Mississippi Rules of Discipline, does not place such a requirement upon the Bar or its General Counsel. If the Petitioner had any evidence that the Bar's General Counsel was acting independent of the Bar's governing body when an appeal was taken of the Tribunal's decision, he should have presented it to the Mississippi Supreme Court. However, he presented no such evidence or proof.

Second, the Bar's Response to the Petitioner's Motion for Rehearing was due, according to the Mississippi Supreme Court, on August 8, 1996 but was not filed until August 9, 1996. The Mississippi Supreme Court sustained the Petitioner's Motion to Strike the Bar's Response to Petitioner's Motion for Rehearing

but still overruled the Petitioner's Motion for Rehearing without comment. [2]

Third, the Mississippi Supreme Court strictly abided by its own rules since such rules do not require the Bar to provide any "evidence" that the Bar's General Counsel was

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[2] In his Petition for Writ of Certiorari, the Petitioner makes the following statement (at footnote 2 p. 10): "Mr. Robb filed a Motion for Rehearing on July 8, 1996. The Mississippi Bar's response was due July 15, 1996. On July 29, 1996, the Court caused its court administrator to notice the Mississippi Bar it had ten days within which to file a response to the Motion for Rehearing See Appendix ??. Such response was due on August 8, 1996 but was not filed until August 9, 1996."

The Petitioner, Mr. Robb, omitted a very important fact in his recitation of the "timeline" quoted above. Rule 40, Mississippi Rules of Appellate Procedure, entitled "Motion for Rehearing " reads as follows:

Rule 40. Motion for Rehearing (a) . . within seven days after the filing of a Motion for Rehearing, any other party may, but need not , (underlining added) file and serve a written response in opposition to the Petition. Failure to file a response within this time period waives the right to respond but does not confess the arguments made in the Petition.

Consequently, Mr. Robb is correct that the Bar's response to his Petition for Rehearing, if it had initially chosen to file a response, was due by July 15, 1996. Instead, the Bar chose not to file a response. Nevertheless, the Court requested the Bar to file a response but struck the Response when it ruled it had been filed one day late. Regardless, Mr. Robb's Motion for Rehearing was denied without comment.

authorized and directed to appeal the Complaint Tribunal's decision. Again, Mr. Robb had the opportunity to present proof to the Mississippi Supreme Court that the Mississippi Bar's General Counsel did not have any such authority yet he did not provide the Court any evidence or proof in support of his position.

Fourth, the Petitioner's reliance upon *The Mississippi Bar v. Attorney G*, supra, as authority for his position is misplaced. The specific rule involved in that case reads, in part, as follows:

> Rule 6. Suspensions and Disbarments Based on Other Proceedings. Rule 6 (a) whenever any attorney subject to the disciplinary jurisdiction of the Court shall be convicted in any court of any state or in any federal court, or enter a

> plea of guilty or a plea of nolo contendere therein, of any felony (other than manslaughter) or of any misdemeanor involving fraud, dishonesty, deceit, misrepresentation, or willful failure to account for money or property of a client, a certified copy of the judgment of conviction shall be presented to the Court by Complaint Counsel and shall be conclusive evidence thereof. . .

Consequently, since *Attorney G* had only pled guilty and no "judgment of conviction" had been entered, the Mississippi Supreme Court ruled that the Bar had failed to produce the document entitled "judgment of conviction" and, consequently, had failed to strictly comply with the applicable rule. Therefore, the

prosecution of *Attorney G*, as alleged under Rule 6, but not under Rule 8, was abated.

There is no rule of procedure in Mississippi's disciplinary process requiring the attachment of the directive given by the Board of Bar Commissioners to the Bar's General Counsel to appeal the Public Reprimand issued to Mr. Robb by the Complaint Tribunal. Likewise, there was no requirement that the Board's minutes be attached to the Notice of Appeal that was filed.

In conclusion, in Mississippi, the Mississippi Supreme Court has exclusive and inherent jurisdiction over bar disciplinary matters.[3] The Petitioner did not present any proof that the Bar was obligated to attach a

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[3] See Rule 1, Mississippi Rules of Discipline; *Foote v. Mississippi State Bar Association*, 517 So.2d 561 (Miss. 1987); *Watkins v. Mississippi Bar*, 589 So.2d 660, (Miss. 1991)..

copy of any document to prove that it had given it's General Counsel a directive to appeal the Complaint Tribunal's decision in order that the Mississippi Supreme Court could conduct its "de novo" review of an attorney disciplinary case.

II.

THE MISSISSIPPI SUPREME COURT CONDUCTED PROPER DE NOVO REVIEW OF THE TRIBUNAL'S RULING.

In this assignment of error, the Petitioner is not asking this Court to condemn the actions of the Mississippi Bar but, instead, the procedure utilized by the Mississippi Supreme Court. The Petitioner asks this Court to put restraints on the Mississippi Supreme Court and the exercise of its exclusive and inherent

jurisdiction over lawyers who practice law in the State of Mississippi. In addition, Petitioner characterizes the Mississippi Supreme Court's jurisdiction to conduct "de novo" review of attorney disciplinary cases as "unfettered". In fact, Petitioner would have this Court declare the procedure utilized by the Mississippi Supreme Court in the instant case involving himself as "null and void" and "remand for the entry of the Opinion and Judgment of the hearing tribunal" (Petition p. 17). And what is Petitioner's basis for this request? The basis is the Mississippi Supreme Court's decision to suspend Mr. Robb for six (6) months from the practice of law because it differed from the Public Reprimand imposed upon him by the Complaint Tribunal.

In support of his position, the Petitioner cites a criminal case, *North Carolina v. Pearce*, 395 U.S. 711, 724-726 (1969), even though he submits that Bar disciplinary proceedings are only quasi-criminal in nature. (Pet. p. 20-21). *Culpepper v. Mississippi State Bar*, 588 So.2d 413 (Miss. 1991).

The Mississippi Supreme Court has rejected Petitioner's "enhanced punishment" argument *in Myers v. Mississippi State Bar*, 180 So.2d 1080 (Miss. 1986) cert. denied 107 S.Ct. 64, 479 U.S. 813, 93 L.Ed. 2d 23.

Nevertheless, in *Myers*, the Mississippi Supreme Court held that even if *Pearce* applied, the sanction imposed was based upon a record which more fully developed the nature of Mr.

Myers' conduct. The same situation exists with respect to Mr. Robb's case.

Finally, the evidence upon which the Petitioner submits was not before the Complaint Tribunal when it imposed it's Public Reprimand, specifically, the copy of the court file where the Petitioner sued his former client based upon the conduct for which the Petitioner was suspended by the Mississippi Supreme Court, was produced by the Petitioner, not the Mississippi Bar, without objection, following a Mississippi Supreme Court Judge's request for the production of such file which was made during oral argument before the Mississippi Supreme Court (App. 50a). The Petitioner had the opportunity to object when he was before the Mississippi Supreme Court but he didn't. He

waived his right to object. Therefore, he cannot raise such objection before this Court, in this proceeding.

III.

CUMULATIVE JUDICAL ACTION WAS APPRPORIATE.

The balance of Mr. Robb's arguments are without merit. Mr. Robb does not and cannot provide any authority for the premise that the Mississippi Supreme Court issues, or is required to issue, mandates in disciplinary cases as it does in civil cases. There are no "double punishment" or "suspension before finality of decision" issues before this Court. Nor is there

any evidence that the Mississippi Supreme Court had a "retaliatory motive within" itself when it exercised its inherent and exclusive jurisdiction over attorney disciplinary matters to conduct a de novo review of the Complaint Tribunal's Public Reprimand of Mr. Robb and, instead, suspended him for six (6) months

CONCLUSION

The purposes of the Mississippi disciplinary system are as follows:

> First, to punish the wrongdoer. Second, to deter similar misconduct. Third, to preserve the dignity and reputation of the legal profession. Fourth, to protect the public. *Mathes v. Mississippi Bar*, 620 So2d 1213, 1222 (Miss. 1993).

In *Mathes*, the Mississippi Supreme Court said the imposition of sanctions has a definite role in reinforcing the confidence of the general public in the legal profession's ability to govern itself. This role is very important regarding attorney disciplinary proceedings because the legal profession assumes the responsibility of governing its members. Therefore, public confidence, faith and integrity in the Bar is dependent upon a willingness to impose appropriate sanctions on its members who have violated the various Codes of Professional Responsibility. 620 So.2d at 1222.

In Mississippi, it is a "privilege", not a property right to practice law. Furthermore, the privilege to practice law is a "revocable"

privilege. *Levi v. Mississippi State Bar*, 436 So2d 781 (Miss. 1983).

In this case, the majority of the issues included in the present Petition for Writ of Certiorari have previously been presented to the Mississippi Supreme Court by this Petitioner and were rejected. Furthermore, there is no special or important reason to grant the instant writ. The instant Petition is "fact specific", as such, this case simply does not present any federal or state constitutional or statutory questions nor does it present any questions upon which there is a conflict in the court of appeals or with the district courts.

The Petitioner was afforded due process of law. He was sanctioned for failing to follow a court rule and his several acts of deceit. That

decision was for the Mississippi Supreme Court to make and it made it. Therefore, this Court should not get involved in a state disciplinary proceeding unless the requirements of Rule 10 have been met. They haven't.

Respectfully submitted,

THE MISSISSIPPI BAR

BY:
MICHAEL B. MARTZ
General Counsel

MICHAEL B. MARTZ
GENERAL COUNSEL
MB I.D. #1908
THE MISSISSIPPI BAR
POST OFFICE BOX 2168
JACKSON, MS 39225-2168
(601) 948-4471